PREFACE TO THE ENGLISH EDITION

My justification for placing another translation in our libraries is that no such book as this exists in the English language and that I could not for some considerable time see my way to collect so many observations on the cryptogamic parasites of higher plants or to find so many suitable subjects for the pictorial illustration of their habits and structure as Dr von Tubeut has given us. The work was undertaken all the more willingly because while working under the guidance of the author I had seen the book take shape in his hands and even added some items to its pages.

The aims of the book are sufficiently set forth in the author's preface and in the preparation of an English edition these have been kept in view. The first or general part and the more important descriptions in the second part are practically translations but a certain amount of modification was found necessary in adapting the work to the requirements of English readers With this object many additions were made both by the author and myself Those which I have inserted are in most cases indicated by the use of (Edit) this has how ever been entirely omitted in the group. Fungi imperfecti and nearly so in the Uredinese on account of the number of changes found necessary I also thought it advisable to indicate whether the different species of fungi had been recorded for Britain and North America this has been done generally by the use of brackets-(Britain and U.S. America). The records for Britain are taken from the works of Plownight Massee and those of three groups -the Uredineae Basidiomycetes and Fungi imperfecti were however revised by Professor J W H Trul of Aberdeen a well known authority For America

the records of economic interest are selected chiefly from Farlow and Seymour's Host Indea which contains the complete list

I here take the opportunity of expressing my thanks to Professor I Tayley Balfour for valuable and and advice to Professor J W H Trul for limitly revising important parts of the proofs to my brother Pobert Smith for assistance in proof realing, and to other friends who have aided me

The difficulties of translation are well I nown in the present case they have been increased by the technical nature of the subject and by the molification which the original has under one. Faults there must be for those I as the indulgence of the reader

W G SMITH

ROYAL BOTANIC GARDEN
EDINBURGH October 1896

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§ 1 DEFINITION OF THE PARASITISM OF FUNGI

Parasitic Fungi are those which stimulated by the cell contents of another living plant penetrate wholly or partially into its tissues and draw their nutriment from that source

Saprophytic Fungi are those which male no attempt to penetrate the ussues of living plants but derive their nutriment from a dead substratum

Intermediate between these two extremes come those fungional which in consequence of some stimulus attempt to effect an entrince into the tissues of living plants by the secretion of some fluid or ferment but only attain their object after first killing the part they attack (cg. Sclerotina sclerotionum). A special position must also be ascribed to certain forms which inhabit the wood of tree, but have not the power to penetrate through the outer tissues, they depend on first guining entrance through wounds into dead parts of the bark or wood and after living there for a time as saprophytes extend into the laving elements and cause their death.

Many parasites may be artificially cultivated so as to pass some part of their life history on dead pabulum and even in natural conditions many of them regularly live for a season in a saprophytic manner. On this account it appears to me more correct in distinguishing letween partsi es and saprophytes to lay less weight on the adaptation to nutrition and more on their response to the stimuli exerted by living plant cells. The nature of this stimulus which affects parasitic hypline has not as yet been investigated. It appears probable however especially from the investigations of I feffer and Mivoshi that the influence is primarily a chemical one and that the nutritive value of the stimulating sulstance is not a measure of the ensuing effect busgen states that the formation of adhesive discs by germinating spores is induced by a stimulus due to contact whereas the production and penetration of the first haustorium is independent of contact and is probably due to some chemical stimulus (see p 9) Mixoshi's investigations have also proved that saprophytic fun-1 are capable of penetrating into living plant organs even

Myosia Ueber (lemotrop sun s. l. Palze." Botar Zet. q. 1804. also. De Durelbolteng son Me. traien iurel Lilfa len. Iri g. lem s Jahrb. ch. 189. Iteli Ueber El et on organ. der Naltstoffe. Pringsteines Jahrb. ch. 1895.

of boring through cell walls if the part be impregnated with a stimulating solution. They behave here completely as parasites for example hyphre of P neullium glucum penetrate into living cells of a leaf injected with a two per cent solution of came sugar while without previous injection of the leaf they have never been observed to do so Paneullium is also known in certain circumstances to become pursatic

Many species of fungi are capable of passing the whole or a part of their life as parisites on living plants. Conspicuous in this respect are the Uredinere and Ustilganere many Ascompetes including all Ecoaseric and Frysipheae and amongst the lower fungi most of the Chatridacere and all the Peronosporere Nor does this exhaust the list for amongst the remaining fungi we may find isolated families generi and even species occurring as parisites while forms closely related to them are suprophytic

To classify the parisites suprophytes and intermediate forms we shall adopt that arrangement proposed by Van Tieghem and De Lary

§ 2 CLASSIFICATION OF PARASITES AND SAPROPHYTES

- 1 True saprophytes are such as regularly pass through their whole life history in a saprophytic manner. They may derive their nourishment from different kinds of pabulum or be limited to some definite substratum. The true saprophytes do not come within the scope of this book.
- 2 Hemi saprophytes (the facultative parisites of De Bary) are wont to pass through their whole development as saprophytes but on occasion are capable of evisting wholly or partially as parasites. Amongst them are included particularly such species as may be designated occasional parisites which commonly occur as saprophytes and only under certain conditions become parisitic.
- 3 True parasites (the obligate parasites of De Bary) These undergo no part of their development as saprophytes but live in every stage of existence as parasites
- 4 Hemi parasites (the ficultative saprophytes of De Bary) are capable if need be of becoming saprophytes for a season

¹Jol of proposes the term Holo saprophytes for those non-chloroplyllous Phanerogams which hive exclusively saprophytic on organic debris in contrast to those possessing chlorophyll which he nance Hemi saproplytes

but as a rule they live throughout their whole development as parasites

Within each of these four divisions one may introduce a

Hemi-saprophytes

The majority of suprophytes are never parasitic, jet there are a number which become so occasionally. Thus some species of Micco and Penicillium can penetrate into thin-skinned fruits, and this they do the more easily, the further the fruits are from the condition of full vital energy, to use De Bary's expression. Itelated to these are other fungi which, although incapable of effecting entrance into plants in active life, may jet do so as the plant, though still living begins to wither. In such cases the prasitism is somewhat difficult to prove. In particular, the so called 'Fungi imperfecti' contain forms of this kind

Amongst the hemi saprophytes we may include the species of Botrytis, which are able to penetrate into unfolding parts of plants, but not into the older parts. We may specially mention Botrytis Douglasia as a form more generally known as a saprophyte, but which becomes parasitic on immature organs, and which penetrates young needles of various comfers to kill them. whereas it is unable to attack older needles. In this case the thickness of the membranes would seem to act as a protection, just as the vital energy of the plant does in the preceding cases In Schrotinia sclerotionum, Sch ciborioides, and Sch Fucheliana, a saprophytic existence must, as in the example just mentioned, precede the parasitie condition, in fact De Bary holds that these forms can only become parasites after their mycelium has been suprophytically strengthened, the parasitic condition is not necessary to them for they can go through their whole development on a dead substratum Pythrum De Baryanum is also to be regarded as a hemi-saprophyte which attacks and kills seedlings of many plants as a parasite, but otherwise vegetates on dead plint remains Cladosporium herbarum, one of the commonest of suprophytes, behaves similarly, but it is of less frequent occurrence than Pythium, and in fact its parasitism has only been suspected quite recently

¹This has been confirmed by Davaine (Compt. rend. LXIII., 1866, pp. 277 and 344) and I refeld (Sit unjsher d. naturforsch. Fr. zn. Berlin, 1875)

As further examples of funge capible as parasites of killing living cells but which pass through more or less of their life as saprophytes may be taken species whose injectum inhibits the wood of trees and shrubs. Amongst these are numerous Rilmoreae which find admission only by wounds in the wood At first these destroy and derive nourishment from the substance of dead parts of the wood but later they begin to attack the parenchyma of the living wood and extending outwards kill as they go cambium bust and rind till they reach the externor and there develop sporophores. As examples we may take those species investigated by he Hartig of Munich eg. Polyporus functions I substant Traintes pint

The heart wood is a part of the tree generally avoided by insects which would in very short time destroy the sap wood with its rich starch content eg. Annobiae in oak. Again the heart wood resists the influence of certain suprophytic fungimuch longer than the sap wood hence it is preferred as the timber used for railway sleepers. Although in these cases we might describe the heart wood as possessing intiseptic properties yet this would screecly be accurate since it is just this very heart wood which is always first attacked by the wound parasites of trees and gives them a hold on the tree as parisites. See also Chap V.

Since these dangerous tree fungican live wholly as saprophytes in the heart wood and in the sap wood partly as such partly as parasites they are also able to regetate further and to reproduce themselves on felled stems especially when the necessary moisture is provided. Thus for example Agaricus a biposus a wound parasite of the alver fir products its yellow sporophores on felled stems and split wood during the whole summer in most parts of the forest while in a cellar or other most chamber the development of sporophores may continue over a year. In fact I have found that a billet of beech wood after being placed under a glass and allowed to he completely dry on agun being solked from time to time continued to produce a cryon for tordstools annually for five years.

Some wound parsites occur occasionally as typical sapro phytes on dead wood Thus Polyporus annosus perhaps better

¹R. Hartig Zersetzi geerselei nje i des Hol es 18 8 an l other works.

known as Tranetes radiciperda, is an undoubted prasite of pines, spruces, and other trees, yet on timber in mines 1 it grows luvurruntly, and reproduces abundantly from sporophores, which, however, differ somewhit from the typical form. Again, the rhizomorph strinds of Agains milleus grow under dead bork, in the earth, in mines, and in wooden water-pipes, while other forms of its mycelium are completely parisitic, thus the apices of the ilizomorphs penetrate the bark of young confers, and in the form of a mycelium, live parasitic on rind, birst, and cumbium

Polypous vaporarius a true parasite on hving Scots pine, is also an enemy of timber in newly-built structures, or in subterranean spaces and cellurs so long as it can obtain the necessary mossture Polypous sulphureus produces sporophores on the bark of living trees, as well as on the dead stools of felled trees. Many other related forms would probably be able to live on dead timber if they were not dependent on a certain degree of moisture and could submit to drying up as easily as, for example Polypous abictinus, a true suprophyte, and one of the most common enemies of old wooden bridges

the most common enemies of old wooden bridges

Fungi from other groups are also known to effect an entrance
into the wood of trees through wounds only, yet when once in,
they spread rapidly, and at length bring about the death of their
host. The spores of Cucurbitaria laburni were demonstrated
by me to germinate on the laburnium on wounds produced
by buil and otherwise and to send into the wood so exposed
a mycelium, which spread through the vessels and into the find,
killing all the tissues on its way. Similarly Nectria cunnabarrina
after it has killed its host, lives thereon as a suprophyte, and
develops patches of condar and peritheers on the dead bark.

Petra Williamiii although really a strict parisite on the living
rind yet continues to grow and to reproduce itself on the dead
brunches

Hemi parasites.

If the examples already given, i.e. Mucor, Penicillium, Botryits Pythium, are typical of hemi suprophytes, then there may arise a doubt whether the remainder, the wood destroying Polyporene Neetria, Cucurbitaria, and Agaricus milleus, should not be regarded

Harr Bolan, Centralblatt 1888 Vol XXXVI Magnus Botan Verein'd Proj.

as hemi parisites. They must, however, be included amongst the hemi suprophytes, because doubtless they are capable of going through their whole development as suprophytes. The hemi parisites include, amongst others, the Ustilaginere, all of which live for a time as parisites, and cannot, even by artificial cultivation, be made to complete their life listory as suprophytes. While, however, many of the Ustilaginere are adapted to a completely parisitic life, others can, in the form of sprouting conding, live and multiply suprophytically. The condina of Exchasidium and Evoacus continue to bud off condin for a considerable time matritive solutions yet in nature, the spores probably produce infecting hyphae at once, and the fungus is but little suited to susting a suprophytic mode of life. Phytophthom infestans is more easily rearred as a suprophyte, and occurs in nature as such, hence it approaches somewhat towards the hemi-aprophytes.

True Parasites

The Uredineae may be taken as the most typical of the true parisites, they constantly pass through their whole life history on living plants, and cuntot be cultivated on a dead substratum. So also the Erysipheae, although frequently their spores only reach maturity on a dead substratium, as do also those of Rhytisma and Polystigma. Ergot of grain and the Sclerotina inhabiting berries, are also truly parasitie, even though their apothecia or perithecia are produced from hibernating sclerotia and though their coincide can be suprophytically cultivated on dead pabulum.

The Peronosporere and Protomyces are also true parasites. In many other forms the development of germ tubes, or the sprouting of condia, may be obtained in artificial nutritive solutions by exclusion of rival fungi and becteria, yet it is doubtful whether this takes place in nature

§ 3 MODE OF LIFE OF THE PARASITIC FUNGI

The parasitic fungi may be divided according to the place of their occurrence and their mode of attack on the host, into two categories which may be designated epiphytic and endophytic parasites 1 The former have their vegetative mycelium spread over the surface of the host-plant, the latter penetrate into the plant and there develop their mycelium Both receive nourishment from the cells of the host plants, generally by means of special absorptive organs inserted into the cells of the host, the so called haustoria

We may distinguish the following groups of parasites according to the degree of their penetration into the organs of the

host-plant they attack

1 Epiphytes (a) with haustoria which only sink into the outer membranes of the host,

(b) with haustoria penetrating into the cavity of the hostrells

- 2 Endophytes (a) with a mycelium which grows in the walls of the host-cell, and is generally nourished without the aid of haustorn.
- (b) with a mycelium which grows in the intercellular spaces only, and is nourished with or without haustoria,

(c) with a mycelium which penetrates into the host cells and becomes an intracellular mycelium,

(d) lower fung, which live completely in a host-cell

1 Acquisition of nutriment by the epiphytic parasitic fung: The simplest mode of acquiring nutriment is found in yersts (Saccharomyces apiculatus etc.) which frequent the outside of living fruits and live on the drops of sugary solution which diffuse therefrom 2

¹ Friphytic parasites always produce their reproductive organs outside their host plant In the case of endophytic parasites, the reproductive organs of some are produced insule the host tissue e f the zygospores and cospores of Chydridaeree and Permosporerae, the chiamydospores of the Ustidanueae, others from their sporocarps wholly or prutally embedded the spores and conducta only being discharged externally, while a large number form sporocarps on the surface after the epiderms has been torn Conduct are generally abjointed from the free surface of the host plant

The terms epiphytic and endophytic parasites have been chosen with regard to the development of the parasitle food absorbing mycelium — Some authors regard epiphytism somewhat differently, and include amongst endophytes those forms which live on the surface of the host and penetrate only by haustoria. If this be accepted epiphytism is very exceptional amongst parasites of the higher plants You (' Die Pilze) gives as examples of this condition only the following the Laboulbeniaceae inhaliting the chitinous skeleton of certain insects and Melano spora parasitica on filaments of species of Isana, these have no communication between the mycelium and their host. Species of Chaetocladium parasitic on fungi an l absorbing the cell wall of the host at the point of contact, could strictly

speaking, no longer be classed as epiphytes Busgen "Ueber einige Figenschaften d Keimlinge parasitischer Pilze Bofan Zeitung, 1893

I can however hardly regard as parsistes fungi like these which live on an accidental outflow from plants or plant cells even though they regularly frequent places where an outflow is to be expected. They exert no influence on the lost plant and they are nourished by substances which can no longer be regarded as belonging to the host. I would rather include them amongst non parisitic epiphytes which without specially adapting themselves settle on any part of a living plant where sugary solutions suitable for their nutriment may occur. One night imagine however such epiphytes inducing a diffusion of nutritive sulstance from the cells of the host endermis to the closely adherent funcal hyphre then we should have the simplest mode of purasitic acquisition of nutriment on the part of epiphytes They would take up food material from the epi dermal cells in much the same manner as many intercellular hyphre do from the adjoining walls of the host cell 1

Exphytic parasites frequenting the surface of plant organs generally endeavour to increase their supply of nutriment from the host cells by formation of haustoria which pierce the cuticle or the whole cell wall. Busgen has shown experimentally that the adhesive discs often formed on the germination of a spore owe their origin to a contact stimulus, the formation and direction of the infecting hyphre on the other hand though depending on this are much more determined by a stimulus originating from the host cell itself In this we have a confirma tion of the accuracy of our definition of

parasite and saprophyte

The appressoria adhesion organs or idhesive discs just mentioned are char acteristic of many parasites. They are formed chiefly on epiphytic mycelia but also accompany the earlier life of other fungi In the case of epiphytes pores are formed on definite places of such an adhesive disc and from these haustoria are developed or a hypha is given off and enters the host plant to form a mycelium The appressoria of the Erysipheae are very characteristic in many they are broad lobed discs (Fig. 1), in



¹ Compare those cases of paras tes on insects and fingualready given p. 8 (note)

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- 1 Petition by husband for a dissolution of marriage with damages against co respondent, by reason of adulters
- Respondent s statement in answer to No 1
- 3 Co respondent's statement in answer to to 1
- 4 Petition for decree of nullity of marriage
- 5 Petition by wife for judicial separation on the ground of her husband's adultery
- 6 Statement in answer to to 5
- 7 Statement in reply to No G
 - 8 Petition for a judicial separation by reason of cruelty
- 9 Statement in answer to No 8
- 10 Petition for reversal of decree of separation 11 Petition for protection order
- 12 Petition for alimony pending the suit
- 13 Statement in answer to No 12
- 14 Undertaking by minor's next friend to be answerable for respondent's costs

(I -Preliminary)

ACT No IV of 1869 1

ſ26th February 1869 7 An Act to amend the law relating to Divorce and Matrimonial

Causes in India

WHERE'S it is expedient to amend the law relating to the divorce of Preamble persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial, It is hereby enacted as follows -

I -Preliminary

I This Act may be called the Indian Divorce Act, and shall come Short title into operation on the first day of April, 1869

2 This Act shall extend to the whole of British India, and (so far Extent of only as regards British subjects within the dominions hereinafter Act mentioned) to the dominions of Princes and States in India in alliance with Her Majesty

Nothing hereinafter contained shall authorize any Court to grant Extent of any relief under this Act, except in cases where the petitioner professes power to the Christian religion and resides in India at the time of presenting generally. the petition,

or to make decrees of dissolution of marriage except in the following cases -(a) where the marriage shall have been solemnized in India, or (b) where the adultery, rape or unnatural crime complained of shall

and to make decrees of dissolution.

Commence ment of Act

For Statement of Objects and Reasons see Calcutta Gazette 1863 p 173 for Report idia 1869 p 192 for Proceedings in Council see 463 ibid 1863 Supplement p 43 and Gazette of

n cipal provisions of the Matrimonial Causes Act ed by the Vatrimonial Causes Act 1859 (22 & 23 Vict c 14) and the Vatrimonial Causes Act 1856 (23 & 24 Vict c 14) and the Vatrimonial Causes Act 1856 (23 & 30 Vict c 22) It also embodies many rulings of Sir Creswell Creeswell and Lord Penzance Ton - Trem on II agent he Charl

namely

and the Kelhān in the District of Singbhum, see Gazette of India 1831. 1 t I p 504 t) Districts of Hazáribágh Lohardaga and Manbhum and Pargana Dhálbhum

(The District of Lohárdanga included t that time the present district of Palaman

Vizagapatam see Fort St George Gazetta

(I -Preliminary)

have been committed in India, or (c) where the husband has, since the solemnization of the marriage, exchanged his profession of Christianity for the profession of some other form of religion.

or of nullity
Interpreta

'High

or to make decrees of nullity of marriage except in cases where the marriage has been solemnized in India 3. In this Act, unless there he something repugnant in the subject

or context,—

(1) "High Court" means .-

in any Regulation province—the Court there established under the Act of the twenty fourth and twenty fifth of Victoria, chapter one hundred and four,

in the territories for the time being subject to the government of the Lieutenant Governor of the Punjab—the Chief Court of the Punjab.

2[in Burma-2 the Chief Court of Lower Burma]

and in any other Non Regulation province and in any place in the dominions of the Princes and States of India in alliance with Her Majesty—the High Court or Chief Court to whose original criminal jurisdiction the petitioner is for the time being subject, or would be subject if he or she were a Turopean British subject of Her Majesty

In the case of any petition under this Act, "High Court" is that one of the aforesaid Courts within the local limits of whose ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together.

(2) "District Judge" means,-5

in the Regulation provinces—a Judge of a principal Civil Court of original jurisdiction,

"District

(1-Preliminary)

1 in the Non-Regulation 2 provinces, other than Sindh and Burma-a Commissioner of a Division 5

in Sindh-the Judicial Commissioner of that province,

- in Burma-a Judge of a Divisional Court, and in any place in the dominions of the Princes and States aforesaid-such officer as the Governor General of India in Council shall from time to time appoint in this behalf by notification in the Gazette of India, and, in the absence of such officer, the High Court in the exercise of its original
- jurisdiction under this Act (3) "District Court" means, in the case of any petition under "District this Act, the Court of the District Judge within the local limits of whose Court," ordinary jurisdiction, or of whose jurisdiction under this Act, the
- husband and wife reside or last resided together (4) "Court" means the High Court or the District Court, as the "Court"

case may be

- (5) "minor children" means, in the case of sons of Native fathers, Minor child boys who have not completed the age of sixteen years, and, in the case of daughters of Native fathers, girls who have not completed the age of thirteen years in other cases it means unmarried children who have not completed the age of eighteen years
- (6) "incestuous adultery" means committed by a husband with Incestuous a woman with whom, if his wife were dead, he could not lawfully con- adultery tract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity

(II -Juris liction)

B gamy with adul tery " (7) "bigams with adultery" means adulters with the same woman with whom the bigams was committed

with another woman, (8) "marriage with another woman" means marriage of any person, being married, to any other person, during the life of the former wife, whether the second marriage shall have taken place within the dominions of Her Maiesty or elsewhere.

"Descriton"

Property "

(9) "desertion" implies an abandonment against the wish of the person charging it and

(10) "property" includes, in the case of a wife, any property to which she is entitled for an estate in remainder or reversion, or as a trustee, executrix or administratrix, and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix

II — Jurisdiction

Vitrimonial
jurisdiction
of High
Courts to be
exercised
subject to
Act
Exception.

4 The jurisdiction now exercised by the High Courts in respect of divorce a mensa et toro, and in all other cruses, suits and matters matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise except so far as relates to the granting of marriage heenses, which may be granted as if this Act had not been passed

Enforcement of decrees or orders made heretofore by Supreme or High Court

5. Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras or Bombay sitting on the ecclesiastical side, or of any of the said High Courts sitting in the exercise of their matrimonial jurisdiction, respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as here-inafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Court so enforcing or dealing with the same

Pending suits

6. All suits and proceedings in causes and matters matrimonial, which when this Act comes into operation are pending in any High Court, shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act

Court to act on principles of English Divorce Court. 7. Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief

Extraordi nary jurisdic tion High Court 8 The High Court may, whenever it thinks fit, remove and try and determine as a Court of original jurisdiction any suit or proceeding

(II - Jurisdiction III - Dissolution of Marriage)

instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act

The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the Court of any other such District Judge

Pow er to transfer suits

9 When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit or in the execution of the decree therein or order thereon.

Reference to High Court

the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case and refer it, with the Court's own opinion thereon, to the decision of the High Court

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference and pass a decree contingent upon the opinion of the High Court upon it

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference

III -Dissolution of Marriage

10 Any husband may present a petition to the District Court or to When hus the High Court, praying that his marriage may be dissolved on the pand may ground that his wife has, since the solemnization thereof, been guilty of adultery

Any wife may present a petition to the District Court or to the High When wife Court, praying that her mailinge may be dissolved on the ground that, may petition for dissolu since the solemnization thereof, her husband has exchanged his pro tion fession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman.

or has been guilty of incestuous adultery,

or of bigamy with adultery.

or of marriage with another woman with adultery.

or of rape, sodomy or bestrality,

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce a mensa et toro.

or of adultery coupled with desertion, without reasonable excuse, for two years or upwards

Every such petition shall state, as distinctly as the nature of the Contents of case permits, the facts on which the claim to have such marriage dis

solved is founded

11. Upon any such petition presented by a husband, the petitioner Adulterer to shall make the alleged adulterer a co respondent to the and petition,

nondent

(III - Dissolution of Marriage)

unless he is excused from so doing on one of the following grounds, to be allowed by the Court -

 that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed.

T1869: Act IV.

(2) that the name of the alleged adulterer is unknown to the petitioner although he has made due efforts to discover it,

(3) that the alleged adulterer is dead

Court to be satisfied of absence of Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or comming at, the going through of the said form of marriage or the adultery, or has condoned the same, and shall also inquire into any counter charge which may be made against the petitioner.

D smissal of petition

10

13 In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed,

or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents.

then and in any of the said cases the Court shall dismiss the peti-

tion
When a petition is dismissed by a District Court under this section,
the petitioner may, nevertheless, present a similar petition to the High

Court

14 In case the Court is satisfied on the evidence that the case of the petitioner has been proved.

pertitioner has been proved, and does not find that the petitioner has been in any manner acces sory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery compliance of .

or that the petition is presented or prosecuted in collusion with either of the respondents,

the Court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections 16 and 17 made and declared

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

permon

Power to Court to pronounce decree for dissolving marriage

Dis orce

(III - Dissolution of Marriage)

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage.

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse.

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery

No adultery shall be deemed to have been condoned within the condonation meaning of this Act unless where conjugal cohabitation has been re sumed or continued

15 In any suit instituted for dissolution of marriage, if the res- Relief in case pondent opposes the relief sought on the ground, in case of such a suit of opposition instituted by a husband, of his adultery, cruelty or desertion without grounds reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty, the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion

16. Every decree for a dissolution of marriage made by a High Decrees for Court, not being a confirmation of a decree of a District Court, shall, in the first instance, be a decree nist, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs

dissolution to

During that period any person shall be at liberty, in such manner Collus on as the High Court by general or special order from time to time directs. to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree nisi, or by requiring further inquiry, or otherwise as justice may demand

The High Court may order the costs of counsel and witnesses, and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Whenever a decree nisi has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit

(III - Dissolution of Marriage, II .- Nullity of Marriage)

17. Every decree for a dissolution of marriage made by a District of decree for Judge shall be subject to confirmation by the High Court dissolution by

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference the omnion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the senior Judge shall prevail

The High Court, if it think further enquiry or additional evidence to be necessary, may direct such enquiry to be made or such evidence to he taken

The result of such enquiry and the additional evidence shall be certified to the High Court by the District Judge, and the High Court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit

Provided that no decree shall be confirmed under this section till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs

During the progress of the suit in the Court of the District Judge. any person, suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the High Court shall thereupon, if it think fit, remove such suit and try and determine the same as a Court of original jurisdiction, and the provisions contained in section 16 shall apply to every suit so removed, or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the 22.50

IV -Nullity of Marriage

Petition for decree of nullity Grounds of

decrees

12

Confirmation

District

Judge

- 18. Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void
 - 19. Such decree may be made on any of the following grounds -
 - (1) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit.
 - (2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity,

(II - Vullity of Marringe I - Indicial Separation)

- (3 that either party was a lunatic or idiot at the time of the marriage,
- (4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud

20 Lyry decree of nullity of marriage made by a District Judge Conshall be subject to confirmation by the High Court, and the provisions of Judge Consection 17, clauses 1, 2, 3 and 4, shall, mutatis mutandis, apply to cree such decrees

Confirmation of District Jidge's de cree

21 Where a marriage is annulled on the ground that a former children of husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract

V -Judicial Separation

22 \o decree shall hereafter be made for a divorce a mesu et toro, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce a menu et toro under the existing law, and such other legal effect as hereunafter mentioned

Bar to decree for divorce a mensd et toro, but judicial separation obtainable by husband or wife

23 Application for judicial separation on any one of the grounds appropriate and may be made by either husband or wife by petition to the formal District Court or the High Court, and the Court, on being satisfied from of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly

Application for separat on made by peti tion

24. In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her

Separated was deemed spinster with respect to , after acquired property

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead

(V.-Judicial Separation Reversal of Decree of Separation VI -- Protection orders)

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate

Separated wile deemed spinster for purposes of contract and suing

25 In every case of a judicial separation under this Act, the wife shall whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and sung and being sued in any civil proceeding, and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted or incurred by her during the separation

Provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband

Reversal of Decree of Separation

Decree of sep aration obts ned during absence of husband or wie may be reversed

26. Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly, but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts or acts of the wife incurred, entered into or done between the times of the sentence of separation and of the reversal thereof

VI -Protection orders

De ected wife may apply to Court for proteet on 27. Any wife to whom section 4 of the Indian Succession Act, Xo. 1865; does not apply, may, when deserted by her husband, present a petition to the District Court or the High Court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have

(VI - Protection-or lers VII - Restitution of Conjugal Rights | 1111 -Damages and Costs)

become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him

28. The Court, if satisfied of the fact of such desertion, and that Court nay the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband and all creditors and persons claiming under him Every such order shall state the time at which the desertion commenced, and shall. . as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time

29 The husband or any creditor of, or person claiming under him, Discharge or may apply to the Court by which such order was made for the discharge orders or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it think fit so to do, may discharge or vary the order accordingly

30. If the husband, or any creditor of, or person claiming under, the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which property after she is hereby empowered to bring), to return or deliver to her the order specific property, and also to pay her a sum equal to double its value

Liability of husband seiz ing wifes not ce of

31 So long as any such order of protection remains in force, the wife Wife a legal shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts ance of order and sung and being sued, as she would be under this Act if she obtained a decree of judicial separation

position during continu

VII -Restitution of Conjugal Rights

32 When either the husband or the wife has, without reasonable Pet tion for excuse, withdrawn from the society of the other, either wife or husband conjugal may apply, by petition to the District Court or the High Court, for rigits restitution of conjugal rights, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly

33 Nothing shall be pleaded in answer to a petition for restitution Answer to of conjugal rights which would not be ground for a suit for judicial separation or for a decree of nullity of marriage

petition

VIII - Damages and Costs

34. Any husband may, either in a petition for dissolution of Husband may marriage or for judicial separation, or in a petition to the District daim dam

adulterer.

(I'III - Damages and Costs IV .- Alemony)

Court or the High Court limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner

Such petition shall be served on the alleged adulterer and the wife unless the Court dispenses with such service, or directs some other service to be substituted

The damages to be recovered on any such petition shall be ascertained by the said Court, although the respondents or either of them may not appear

After the decision has been given, the Court may direct in what

manner such damages shall be paid or applied

35 Whenever in any petition presented by a husband, the alleged adulterer has been made a co respondent, and the adultery has been established, the Court may order the co respondent to pay the whole or any part of the cost of the proceedings

Provided that the co respondent shall not be ordered to pay the

petitioner's costs-

- if the respondent was, at the time of the adultery, living apart from her husband and leading the life of a prostitute, or
- (2) if the co respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman

Whenever any application is made under section 17, the Court, if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application

IA -Alimony

Al mony pendente ? te

Power to order lit gious

pay costs

intervenor to

Power to order adulter

er to pay

costs

36. In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit

Such petition shall be served on the husband, and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just

Provided that alimony pending the suit shall in no case exceed one fifth of the husband's average nett income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be

Power to order permanent almony 37. The High Court may, if it think fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

(IX -Alimony X .- Settlements)

and the District Judge may, if he thinks fit, on the confirmation of any decree of his, declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable, and for that purpose may cause a proper instrument to be executed by all necessary parties

In every such case the Court may make an order on the husband for Power to payment to the wife of such monthly or weekly sums for her maintenance ly or weekly

and support as the Court may think reasonable Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to dis charge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit

38. In all cases in which the Court makes any decree or order for Court may duret pay alimony it may direct the same to be paid either to the wife herself, or ment of to any trustee on her behalf to be approved by the Court, and may almost to mile or to mile or to mile or to seem expedient, be trustee and may from time to time appoint a new trustee, if it appears to the Court expedient so to do

payments.

$X \leftarrow Settlements$

39 Whenever the Court pronounces a decree of dissolution of Power to marriage or judicial separation for adultery of the wife, if it is made to order settle ment of wife s appear to the Court that the wife is entitled to any property, the Court property for may, if it think fit, order such settlement as it thinks reasonable to be bested of wishand and made of such property or any part thereof, for the benefit of the children. husband, or of the children of the marriage, or of both

Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a decice of dissolution of marriage or judicial separation shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof

The Court may direct that the whole or any part of the damages Settlement of recovered under section 34 shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife

40 The High Court, after a decree absolute for dissolution of Inquiry into marriage, or a decree of nullity of marriage,

and the District Court, after its decree for dissolution of marriage or post-

existence of anto-nuntral nuptial o settlement.

damages,

or of nullity of marriage has been confirmed. VOT. TT

(\I - Custody of Children)

may inquire into the existence of aute nuptial or post-nuptial settle means made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the childrin (if any) of the marriage, or of both children and parents, as to the Court seems fit

Provided that the Court shall not make any order for the benefit of the parents or either of them at the expense of the children

MI -Custody of Children

Power to make orders as to custody of children in suit for separation.

41 In any suit for obtaining a judicial separation the Court may from time to time, before maling its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the said Court

Power to make such orders after decree 42 The Court, after a decree of judicial separation, may upon ap plication (by petition) for this purpose male, from time to time, all such orders and provision, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending

Power to make orders as to custody of children in suits for dissolution or nullity

43 In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in, or removed to, a High Court, the Court may from time to time, before making its decree absolute or its decree (as the case may be), male such interim orders, and may make such provision in the decree absolute or decree,

and in any such suit instituted in a District Court the Court may from time to time, before its decree is confirmed, make such interim orders, and may make such provision on such confirmation.

is the High Court or District Court (as the case may be) deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the suit.

and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the Court

44 The High Court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage,

and the District Court, after a decree for dissolution of marriage or of nullity of marriage has been confirmed

Power to make such orders after decree or confirmation.

(\II -Procedure)

may, upon application by petition for the purpose, make from time to time all such orders and provision, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid

\II -Procedure

45 Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of apply Civil Procedure 1

46 The forms set forth in the schedule to this Act, with such Forms of variation as the circumstances of each case require, may be used for statements the respective purposes mentioned in such schedule

47 Every petition "under this Act for a decree of dissolution of Stamp on marriage or of nullity of marriage, or of judicial separation 3 . * shall 3 * * state that there is not any collusion or connivance Petition to

between the petitioner and the other party to the marriage, the statements contained in every petition under this Act shall be Statements to verified by the petitioner or some other competent person in manner be verified. required by law for the verification of plaints, and may at the hearing be referred to as evidence

of collus on.

48 When the husband or wife is a lunatic or idiot, any suit under Suits on bethis Act (other than a suit for restitution of conjugal rights) may be half of lunates brought on his or her behalf by the committee or other person entitled to his or her custody

49 Where the petitioner is a minor, he or she shall sue by his or Suits by her next friend to be approved by the Court and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs

Such undertal ing * * * 4 shall be filed in Court and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit

50 Every petition under this Act shall be served on the party to be Service of affected thereby, either within or without British India, in such manner as the High Court by general or special order from time to time directs

See now the Code of Caval Procedure 1908 (Act V of 1908) General Acts Vol VI

(\II-Procelure)

Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do

Mode of tak ing evidence 51 The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross examined and re examined, like any other witness

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the Court, be subject to be cross examined by or on behalf of the opposite party orally, and after such cross examination may be re examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

such affidavit was file

52 On any petition presented by a wife, praving that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

Power to close doors.

Competence

of husband

and wife to g ve evidence

as to crue tr

53 The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors
54 The Court may from time to time adjourn the hearing of any

Power to

54 The Court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do 55 All decrees and orders made by the Court in any suit or pro-

Enforcement of and appeal from orders and decrees

ceeding under this Act shall be enforced and may be appealed 1 from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from under the laws, rules and orders for the time being in force

Provided that there shall be no appeal from a decree of a District Judge for dissolution of marriage or of nullity of marriage nor from the order of the High Court confirming or refusing to confirm such

decree

Provided also that there shall be no appeal on the subject of costs only

No appeals as to costs. Appeal to Queen n Council,

56 Any person may appeal to Her Majesty in Council from any decree (other than a decree nist) or order under this Act of a High Court made on appeal or otherwise

and from any decree (other than a decree nisi) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court.

For court fee on memorandum of appeal see the Court fees Act 1870 (VII of 1870) Sch II No 20 infra

(VIII -Re marriage XII - Miscellaneous)

when the High Court declares that the case is a fit one for appeal to Her Majesty in Council

XIII -Re marriage

57. When six months after the date of an order of a High Court Liberty to confirming the decree for a dissolution of marriage made by a District marry again, Judge have expired,

or when six months after the date of any decree of a High Court dissolving a marriage have expired and no appeal has been presented against such decree to the High Court in its appellate jurisdiction, or when any such appeal has been dismissed.

or when in the result of any such appeal any marriage is declared to be dissolved.

but not sooner, it shall be lawful for the respective parties to the marriage to marry again, as if the prior marriage had been dissolved by death

Provided that no appeal to Her Majesty in Council has been presented against any such order or decree

When such appeal has been dismissed, or when in the result thereof the marriage is declared to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if

the prior marriage had been dissolved by death

58 to clergyman in Holy Orders of the * * 1 Church of England English * * shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery. or shall be liable to any suit penalty or censure for solemnizing or refusing to solemnize the marriage of any such person

clergyman not compelled to solemnize marr ages of persons divorced for adultery

59 When any minister of any church or chapel of the said Church refuses to perform such marriage service between any persons who but for such refusal would be entitled to have the same service performed in such church or chapel such minister shall permit any other minister in Holy Orders of the said Church entitled to officiate meny to pe within the diocese in which such church or chapel is situate to perform such marriage service in such church or chapel

English minister refusing to per form ceremony to per his church,

XIV -Miscellaneous

60 Every decree for judicial separation or order to protect property obtained by a wife under this Act shall, until reversed or discharged. be deemed valid, so far as necessary, for the protection of any person dealing with the wife

Decree for separation or protection order val d as to persons dealing with wife before reversal.

was repealed by the Repealing Act 1873 (XII of 1873) 1 The word United The words and Ireland were repealed by Act \II of 1873

(AIF - Mescellaneous)

No reversal, discharge or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order and of the reversal, discharge or variation thereof

Indemnity of persons making payment to wife with out notice of reversal of decree or protection order

All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

unless, at the time of the payment, transfer or other act, such persons had notice of the reversal, discharge or variation of the decree or order or of the cessation or discontinuance of the separation

61. After this Act comes into operation, no person competent to

Bar of sut for criminal conversation.

present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife 62 The High Court shall make such rules under this Act as it may

Power to make rules

from time to time consider expedient, and may from time to time alto and add to the same 1 Provided that such rules, alterations and additions are consistent with

the provisions of this Act and the Code of Civil Procedure 2

All such rules, alterations and additions shall be published in the local official Gazette

¹ For rule in force in Bombay as to confirmation of decrees for dissolution of marriage, see Bom R & O

² See now the Code of Civil Procedure 1908 (Act V of 1908) General Acts Vol. 3.1

. 186 .

(The Schedute)

SCHEDULE OF FORMS

NO 1 —PETITION BY HUSBIND FOR A DISSOLUTION OF MARRIAGE WITH DAMAGES AGAINST CORESPONDENT, BY REASON OF ADULTERY

(See sections 10 and 34)

In the (High) Court of

To the Hon'ble Mr Justice

[or To the Judge of]

The day of

The petition of A B . of

SHEWETH.

- 1 That your petitioner was on the day of , one thousand eight hundred and , lawfully married to C B , then C D , spinster, at
- 2 That from his said marriage, your petitioner lived and cohabited with his said wife at and at , in , and lastly at in , and that your petitioner and his said wife have had issue of their and marriage, five children, of whom two sons only survive, aged respectively tiechie and fourteen years
- 3 That during the three years immediately preceding the day of one thousand eight hundred and , X Y was constantly, with few exceptions residing in the house of your petitioner at aforesaid, and that on divers occasions during the said period, the dates of which are unknown to your petitioner, the said C B in your petitioner's said house committed adultery with the said X Y
- 4 That no collusion or connivance exists between me and my said wrife for the purpose of obtaining a dissolution of our said marriage or for any other purpose

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a dissolution of the said marriage, and that the said X Y do pay the sum of rupees 5,000 as damages by reason of his having committed adultery with your petitioner's said wife, such damages to be paid to your petitioner, or otherwise paid or applied as to this (Hon'ble) Court seems fit

(Signed) A B b

a If the marriage was solemnized out of India, the adultery must be shown to have been committed in India b The petition must be signed by the petitioner

Form of Verification

I, A B, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief

No 2-Respondent's statement in answer to No 1

the

In the Court of

day of

Between A B , petitioner,

C B, respondent, and A I', co respondent

C B, the respondent, by D E, her attorney [or vakil], in answer to the petition of A B, says that she denies that she has on divers or any occasions committed adultery with A I', as alleged in the third paragraph of the said petition

Wherefore the respondent prays that this (Hon'ble) Court will reject the said petition

> (Signed) C B

No 3 -Co Respondent's statement in answer to No 1

In the (High) Court of The

day of

Between A B, petitioner,

C B, respondent, and

A I , co respondent

A I', the co respondent, in answer to the petition filed in this cause, saith that he denies that he committed adultery with the said C B as alleged in the said petition

Wherefore the said A Y prays that this (Hon'ble) Court will reject the prayer of the said petitioner and order him to pay the costs of and incident to the said petition

(Signed) X Y

No 4 - Petition for Decree of Nullity of Marriage

(See section 18)

In the (High) Court of

To the Hon'ble Mr Justice

For To the Judge of The

day of The petition of A B , falsely called A D

SHEWETH,

I. That on the

day of

, one thousand eight hundred

٦.

(The Schedule)

and , your petitioner, then a spinster, eighteen years of age, was married in fact, though not in law, to C D, then a bachelor of about thirty years of age, at [some place in India]

2 That from the said day of , one thousand eight hundred and , until the month of , one thousand eight hundred and , your petitioner lived and cohabited with the said C D, at divers places, and particularly at aforesaid

3 That the said C D has never consummated the said pretended marriage by carnal copulation

4 That at the time of the celebration of your petitioner's said pretended marriage, the said C D was, by reason of his impotency or

malformation, legally incompetent to enter into the contract of marriage
5 That there is no collusion or connivance between her and the said

C D with respect to the subject of this suit

Your petitioner therefore prays that this (Hon'ble) Court will declare that the said marriage is null and void

(Signed) A B

Form of Verification see No 1

No 5 —Petition by Wife for judicial separation on the ground of hee husband's adultery

(See section 22)

In the (High) Court of

To the Hon'ble Mr Justice

The

[or To the Judge of

The petition of C B, of A the wife of A B.

SHEWETH,

I That on the day of , one thousand eight hundred and sixty , your petitioner, then C D, was lawfully married to A B at the Church of , in the

2 That after her said marriage, your petitioner cohabited with the said A B at and at , and that your petitioner and her said husband have issue living of their said marriage, three children, to wit, etc. etc.

3 That on divers occasions in or about the months of August, September and October, one thousand eight hundred and sixty, the said A B, at aforesaid, committed adultery with E F, who

was then living in the service of the said 1 B and your petitioner at their said residence aforesaid

- 4 That on divers occasions in the months of October, November and December, one thousand eight hundred and sixty , the said A B, at aforesand, committed adultery with G H, who was then living in the service of the said A B and your petitioner at their said residence
- 5 That no collusion or connivance exists between your petitioner and the said A B with respect to the subject of the present suit

Your petitioner therefore priys that this (Hon'ble) Court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery

(Signed) C B .

Form of Verification see No 1

NO 6 -- STATEMENT IN ANSWER TO NO 5

In the (High) Court of

$$B$$
 against B

The respondent, A B, by W 1, his atterney [or valil], saith,-

1 That he denies that he committed adultery with E \tilde{F} , as in the third paragraph of the petition alleged

2 That the petitioner condoned the said adultery with E F, if any 3 That he denies that he committed adultery with G H, as in the

fourth paragraph of the petition alleged

4 That the petitioner condoned the said adultery with G H, if any Wherefore this respondent prays that this (Hon'ble) Court will reject the prayer of the said petition

(Signed) A B

No 7-STATEMENT IN REPLY TO NO 6

In the (High) Court of

B against B

day of

The petitioner C B, by her attorney [or vakil], says,—

1 That she denies that she condoned the said adultery of the respondent with E = F as in the second paragraph of the statement in answer alleged

2 That even if she had condoned the said adultery, the same has been revived by the subsequent adultery of the respondent with G. H, as set forth in the pringraph of the petition

(Signed) C B

No 8 —Petition for a judicial separation by reason of cruelty (See section 22)

In the (High) Court of

To the Hon'ble Mr Justice

[or To the Judge of The day of , 186

The petition of A B (wife of C B) of

Sheweth,

1 That on the day of , one thousand eight hundred and , your petitioner, then A D , spinster, was lawfully married to

2 That from her said marriage, your petitioner lived and cohabited with her said husband at until the day of , one thousand eight hundred and , when your petitioner separated from her said husband as hereinafter more particularly mentioned, and that your petitioner and her said husband have had no issue of their said marriage.

3 That from and shortly after your petitioner's said marriage, the said C B habitually conducted himself towards your petitioner with great harshness and cruelty, frequently abusing her in the coarsest and most insulting language, and beating her with his fists, with a cane, or

with some other weapon

- 4 That on an evening in or about the month of one thousand eight hundred and , the said C B in the highway and opposite to the house in which your petitioner and the said C B were then residing at aloresaid, endeavoured to knock your petitioner down, and was only prevented from so doing by the interference of F D, your petitioner's brother
- 5 That subsequently on the same evening, the said C B, in his said house at aforesaid, struck your petitioner with his clenched fists a violent blow on her face
- 6 That on one Friday night in the month of , one thousand eight hundred and , the said $C\ B$, in , without provocation, threw a kinfe at your petitioner, thereby inflicting a severe wound on her right hand

7 That on the afternoon of the day of , one thousand eight hundred and , your petitioner, by reason of the great and

continued cruelty practised towards her by her said husband, with assistance withdrew from the house of her said husband to the house of , that from and after the said her father at day of one thousand eight hundred and , your petitioner hath lived separate and apart from her said husband, and hath never returned to his house or to cohabitation with him

8 That there is no collusion or connivance between your petitioner and her said husband with respect to the subject of the present suit

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a judicial separation between your petitioner and the said C B, and also order that the said C B do pay the costs of and incident to these proceedings

> (Signed) ΛB

Form of Verification sec No 1

NO 9 -STATEMENT IN ANSWER TO NO 8

In the (High) Court of

The

day of

Between A B, petitioner, and

C B, respondent

C B, the respondent in answer to the petition filed in this cause, by W J, his attorney [or vakil], saith that he denies that he has been guilty of cruelty towards the said A B, as alleged in the said petition

(Signed) C B

NO 10-Petition for Reversal of Decree of Separation

(See section 24)

In the (High) Court of

To the Hon ble Mr Justice

For To the Judge of The

. 186 day of The petition of AB, of

SHEWETH

1 That your petitioner was on the day of , lawfully married to

2 That on the , this (Hon ble) Court, at the day of

petition of , pronounced a decree affecting the petitioner to the effect following, to wit,—

Here set out the decree.

3 That such decree was obtained in the absence of your petitioner, who was then residing at

[State facts tending to show that the petitioner did not know of the proceedings, and, further, that had he known he might have offered a sufficient defence,]

01

That there was reasonable ground for your petitioner leaving his said wife for that his said wife

[Here state any legal grounds justifying the petitioner's separation from his wife]

Your petitioner, therefore, prays that this (Hon'ble) Court will reverse the said decree

(Signed) A B

Form of Verification see No. 1

No 11 -Petition for Protection order

(See section 27)

In the (High) Court of

To the Hon'ble Mr Justice for To t

[or To the Judge of The day of , 186

The petition of C B of

the write of A B

Sheweth,

That on the day of she was lawfully married to A. B.

That she lived and cohabited with the said A B for years at , and also at , and had had children, issue of her said marriage, of whom are now living with the applicant, and wholly dependent upon her earnings

That on or about , the said $A \ B$, without any reasonable cause, described the applicant, and hath ever since remained separate and apart from her

That since the desertion of her said husband, the applicant hath maintained herself by her own industry [or on her own property, as the case may be] and hath thereby and otherwise acquired certain property consisting of [here state generally the nature of the property]

Wherefore she prays an order for the protection of her earnings and property acquired since the said day of , from the said A B, and from all creditors and persons claiming under him

(Signed) C B

NO 12 -PETITION FOR ALIMONY PENDING THE SUIT

(See section 36)

In the (High) Court of

B against B

To the Hon'ble Mr Justice

[or To the Judge of]
The day of , 186 .
The petition of C B , the law ful wife of A B

SHEWETH.

- 1 That the said A B has for some years carried on the business of nacome of from Rs 4,000 to 5,000
- 2 That the said A B is possessed of plate, furniture, linen and other effects at his said house aforesaid, all of which he acquired in right of your petitioner as his wife, or purchased with money he acquired through her, of the value of Rs 10,000
- 3 That the said A B is entitled, under the will of his father, subject to the life interest of his mother therein, to property of the value of Rs 5,000 or some other considerable amount?

Your petitioner, therefore, prays that this (Hon'ble) Court will decree such sum or sums of money by way of alimony, pend ing the suit, as to this (Hon'ble) Court may seem meet

(Signed) C B

The petitioner should state her husband s inc me as accurately as possible

(The centum

Form of Verification see No 1

NO. 13 -SCATEMENT IN ANSWER TO NO. 12

In the (High) Court of

B against B

A B, of , the abovenamed respondent, in answer to the petition for alimony, pending the suit of C B, says—

- 1 In answer to the first paragraph of the said petition, I say that I have for the last three years carried on the business of a, at , and that, from such business, I have derived a net
- at , and that, from such business, I have derived a nett annual income of Rs 900, but less than Rs 1,000 2 In answer to the second paragraph of the said petition, I say that
- 2 In answer to the second paragraph of the said petition, I say that I am possessed of plate, furniture, linen and other chattels and effects at my said house aforesaid, of the value of Rs 7,000, but as I verily believe of no larger value And I say that a portion of the said plate, furniture and other chattels and effects of the value of Rs 1,500 belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own moneys And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned
- 3 I admit that I am entitled under the will of my father, subject to the life interest of my mother therein, to property of the value of Rs 5,000, that is to say, I shall be entitled under my said father's will, upon the death of my mother, to a legacy of Is 7,000, out of which I shall have to pay to my father's executors the sum of Is 2,000, the amount of a debt owing by me to his estate, and upon which debt I am now paving interest at the rate of five per cent per annum
- 4 And, in further answer to the said petition, I say that I have no income whatever except that derived from my aforesaid business, that such income, since my said wife left me, which she did on the
- day of last, has been considerably diminished, and that such diminution is likely to continue And I say that out of my said income, I have to pay the annual sum of Rs 100 for such interest as aforesaid to my late father's executors, and also to support myself and my two eldest children

Articles of War.

[1869 : Act V.

5. And, in further answer to the said petition, I say that, when my wife left my dwelling-house on the day of lost, she took with her, and has ever since withheld and still withholds from me, plate, watches and other effects in the second paragraph of this my answer mentioned, of the value of, as I verily believe, Rs. 800 at the least; and I also say that, within five days of her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine, amounting in the aggregate to Rs. , and that she has ever since withheld and still withholds from me the same sum.

(Signed) A. B.

No. 14.—Undertaking by minor's next friend to be answerable for respondent's costs.

(See section 49.)

In the (High) Court of

I, the undersigned, A. B., of , being the next friend of C. D., who is a minor, and who is desirous of filing a petition in this Court, under the Indian Divorce Act, against D. D. of , hereby undertake to be responsible for the costs of the said D. D. in such suit, and that, if the said C. D. fail to pay to the said D. D. when and in such manner as the Court shall order all such costs of such suit as the Court shall direct him (or her) to pay to the said D. D., I will forthwith pay the same to the proper officer of this Court.

Dated this day of , 186 .

(Signed) A. B.

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Article 134 -Reduction of non commissioned officers to ranks

Article 135 - Forfeiture of pay and pension

Article 136 -Stoppage of good conduct pay on conviction

Article 137 — Forfeiture of arrears of pay Article 138 — Stoppages

Article 139 —Extent of stoppages

Article 140 —Sentence of transportation or imprisonment on person already sentenced

Article 141 -Form of sentence of death

CHAPTER IV

CONFIRMATION AND COMMUTATION OF SENTENCES

Articles 142 to 149 -[Repealed]

CHAPTER V

EXECUTION OF SENTENCES

Article 150 -Transportation

Article 101 -Imprisonment with hard labour

Article 152 -Place of imprisonment

Article 153 -Transfer to military custody

Article 154 —Forfeiture of pay during imprisonment
Article 155 —Striking convict off strength of regiment

Articles 156 to 159 - Repealed]

CHAPTER VI

PARDONS AND REMISSIONS

Article 160 -Pardons and remissions

Article 161 -Release of prisoners

Prescriation of Proceedings

Article 161A -Preservation of proceedings of courts martial

CHAPTER VII

REGIMENTAL COURTS OF ENQUIRY

Article 162 - Enquiry on absence of person subject to Articles

Article 163 -Persons absent as prisoners of war

TITLE IV

POWERS OF OFFICERS INDEPENDENTLY OF TRIAL

Article 164 -Reduction to lower grade or ranks

Article 165 -Minor punishments

Article 166 -Offences of native followers

Article 167 —Complaints against officers
Article 168 —Provost marshals

Article 169 — Their duties and powers

TITLE V

NON MILITARY OFFINCES

Offences of which any zeron is accused within jurisdiction of Criminal Court

Article 170 -Offences of which any person is accused within juris diction of Criminal Court

Civil offences

Article 171 -Military jurisdiction with respect to civil offences

Article 172 -Extension of article 171 to certain civil offences

Article 173 -Certain offences when triable by military law

Article 174 -Jurisdiction over certain offences

Article 175 -- Power of Criminal Court to require delivery of

TITLE VI

PROPERTY OF DECEASED PERSONS AND DESERTERS

Article 176 -- Property of deceased persons deserters and lunatics Article 177 -- Disposal of certain property without production of

probate etc

Article 178 —Meaning of desertion in article 176

Article 179 -Application of article 1°6 to lunatics

PART III

MISCELLANDOUS

Article 180 -Prohibition of second trial

Article 181 —Exemption from arrest for debt

Article 182 —Property exempted from attachment

Article 183 - Application of the last two foregoing articles to

Article 184 —Priority of hearing by courts of cases in which Native
officers and soldiers are concerned

Article 185 -Capture of deserters

Article 186 -Apprehension of military offenders

Article 187 -Presumption as to signatures

Article 188 -Portions of the forces under an Army Command

Article 189 -Saving of authority of Commander in Chief in India

Article 190 -Power to make rules

(Part I - Preliminary)

Article 191.—Powers to apply Articles to certain forces under the Government of India.

APPENDIX.

THE SECOND APPENDIX. (Repealed.)

ACT No V or 1869.1

[26th February 1869.]

An Act to consolidate and amend the Articles of War for the Government of Her Majesty's Native Indian Forces.

PREAMBLE.

WHEREAS it is expedient to consolidate and amend the Articles of

¹ For Statement of Objects and Reasons, see Gazette of India, 1868, p 1648, for proceedings in Council, see told, 1868, Supplement, pp 8, 92 and 107, and told, 1869, Supplement, p 301

Act V of 1869 has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s 4 (1) and Sch I, Bur Lode

The Act has been applied to the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of Regulation, 1899 (III of Hill District Laws Regul by the British Bulochist Angul and the Khondms

Code
The Act as amended by the Indian Articles of War Amendment Act, 1894 (XII of
LDM), is in force in the Shan States—see Schedule to the Shan States Laws and Criminal
Transact Orier 1828, From Code

It has been declared, by notheration under the Scheduled Districts Act, 1874 (XIV of 1874) to be in force in the Districts of Hazartiskel, Lobdridgs (Inove called the Ranch District) including the present District of Palamau), and Maphbum, and Pargana Dhal-bhum, and the Kolhan in the District of Singhbbum (Gastet of India, 1881, Pt 1, p. 504)

Affidavits and declarations in writing, when made as a condition of enlistment under these Articles, are exempt from stamp duty—see cluss 4 of Sch I to the Indian Stamp-Act, 1999 [11 of 1899], General Acts, Vol V

The pay and allowances of persons to whom it so Articles apply are exempt from attachment and sale in execution of a decree—see proviso (1) to s 60 (2), Code of Civil Procedure, 1938 (Act V of 1938), General Acts, Vol. VI

As to arrest of deserters without warrant, see clause sixthly of a 54 of the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V

The Indian Oaths Act, 1873 (X of 1873), does not apply to proceedings before Courts-martial—see s 3 of the Act, infra

(Part I .- Preliminary)

War for the government of the Native officers, soldiers and other persons in Her Majesty's Indian Army, It is hereby enacted as follows —

PART I

PRELIMINARY

(a) Short Title

This Act may be called the Indian Articles of War

(b) Commencement of Act

This Act shall come into operation on the first day of June 1869.

(c) Repeal of Enactments

[Repealed by Act XII of 1894, s 2]

1(d) Application of Articles

These Articles shall apply to all—

- (a) persons to whom they actually apply at present,
- (b) persons commissioned or gazetted as Native officers, or gazetted as warrant officers, of Her Majesty's Indian Forces,
 - (c) medical subordinates,
 - (d) persons attested under these Articles,
 - (e) unattested recruits,
 - (f) persons enrolled under these Articles;
- (g) persons, not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the Governor General in Council by notifica tion 2 in this behalf, are employed by, or are in the service of or are followers of, or accompany any portion of, Her Majesty's Indian Forces,

Provided as follows

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Vict. a 58

if any person claims to belong to a class to which the Army Act 3 is, and these Articles are not, applicable, the burden of proving that hebelongs to that class shall lie upon him

^{&#}x27;This clause was substituted for the original cl [d] by the Indian Articles of War Amendment Act 1894 (VII of 1894) s 3 General Acts vol IV 'For such notification in respect of followers at Chumbi Phari and Lyanise, see Gazette of India, 1907 rt I, p 456 'Coll Stat, Vel I

(Part I - Preliminary)

1(e) Definitions

In these Articles, unless there is something repugnant in the subject or context,---

- (1) "notification" means a notification published in the official Gazette
- (2) "prescribed" means prescribed by rules made by the Governor General in Council or by any authority empowered by him in this behalf
- (3) "British officer" means an officer holding a commission in Her Majesty's land forces, but does not include an honorary commissioned officer
- (4) "Native officer" means an officer commissioned or gazetted as an officer holding a Native rank in Her Majesty's Indian Porces
- (5) "officer" means a British officer or Native officer, but does not include a warrant officer or non commissioned officer
- (6) "medical subordinate" means a senior hospital assistant, a hospital assistant of the first, second or third class, and a sub hospital assistant, but does not include an officer
- (7) "superior officer", when used in relation to a person subject to these Articles, includes a warrant officer, a non commissioned officer and an acting non commissioned officer
- (8) "soldier" includes a non-commissioned officer and any armed person doing duty in the ranks of Her Majesty's Indian Forces
- (9) "recruit" means a person enlisted for enrolment in any corps or department as a soldier
- (10) "corps" means a unit of command, such as a regiment of cavalry, a regiment or battalion of infantry, a battery of artillery, and any other separate body of troops which is declared by the Governor General in Council by general or special order to be a corps for the pur poses of these Articles, it also includes an army hospital corps and a transport corps
- (11) "department" includes any division or branch of a department
- (12) "military reward" means any gratuity or annuity for long screece or good conduct, it also includes any good conduct pay or pension and any other pecuniary reward
- (13) "enemy" includes all armed mutineers armed rebels, armed rioters and pirates

¹ This clause was substituted for the original cl (e) by the Indian Articles of War Amendment Act 1694 (XII of 1694) s 4 General Acts Vol. 1V

(Part I -Preliminary)

(II) "active service", as applied to a person subject to these Articles, means the time during which such person is attached to or forms part of a force which is engaged in operations against an enemy, or is ingaged in military operations in, or is on the line of march to, a country or place whelly or partly occupied by an enemy, or is in military occupation of any foreign country.

(15) the expression 'India" means British India, together with any territories of an Prince or Chief under the suzeranty of Her Majesty exercised through the Governor General in Council or through any Governor in Council or other officer subordinate to the Governor General in Council and the expression British India" means all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty shough the Governor General in Council or through any Governor in Council or other officer subordinate to the Governor General in Council

(16) the expression "general officer of the Command" means the general officer commanding the forces in a Command and the expression "Command" means one of the principal portions into which the army of India is, for the time being, divided

(17) "commanding officer," when used in any provision of these Articles with reference to any separate portion of Her Majesty's forces or to any department, means the British officer whose duty it is under the Army Regulations India, or, in the absence of any such regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision

(18) "military custody" means the arrest or confinement of a person, according to the usages of the service

(19) "court martial" means a court martial held under these Articles 3

(29) "criminal court" means a court of ordinary criminal justice in British India, or established or continued elsewhere by the authority of the Governor General in Council

(2I) "civil offence—means an offence which if committed in British India would be triable by a criminal court

(22) "offence" means any act or omission punishable under these Articles and includes a civil offence as hereinbefore defined and

Cf definition in s 18 (5) of the Interpretation Act 1889 (52 & 53 Vict, c. 63) Coll Stat, Vol II Ed 1889 p 862 Cf definition in 3 (7) of the General Clauses Act 1897 (V of 1897) General Acts Vol IV

Of with regard to the Indian Marine the Indian Marine Act 1887 (YIV of 1887). General Acts Vol IV as to volunteers see the Indian Volunteers Act 1899 (XX of 1896) infra In connection with Courts martial see also s 3 of the Indian Oaths Act 1873 (Y of 1873), sprfac.

(Part I - Preliminary. Part II - The Articles of War Title I -- Enrolment, Attestation, Dismissal and Discharge)

(23) expressions occurring in the Indian Penal Code 1 and used in XLY of these Articles and not herein otherwise defined shall have the meanings respectively assigned to them by that Code

2(f) Saving of certain Regulations

Nothing in these Articles shall affect any regulations by which the respective offices and powers of contomient integritates and officers in charge of the police in cantonments are defined and controlled

PART II

THE ARTICLES OF WAR

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ENROLMENT, ATTESTATION, DISMISSAL AND DISCHARGE

Enrolment and attestation.

at Article I—(I) The Governor General in Council may, by notification, declare what persons or classes of persons shall be enrolled only, or be both enrolled and attested, respectively 4

Mode of en-7 rolment. (2) A person shall be deemed to be enrolled under these Articles when his name has, with his consent, been entered in the prescribed manner on the list of a corps or department of Her Majesty's Indian Forces

Mode of attestation. (3) Subject to the provisions of this article with respect to recruits, every person to be attested under these Articles shall be taken before the prescribed civil or military officer, and that officer shall read and explain to him, or cause to be read and explained to him in his presence, the questions set forth in the prescribed form of attestation, and such other matters (if any) as may be prescribed, and, after having cautioned him that if he makes a false answer to any question set forth in the attestation form he will be liable to be punished as provided by these Articles, shall record the answer to each question, and shall, if he is satisfied that the person fully understands the questions, and that the answer has been correctly recorded opposite each question, and if he perceives no impedit

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General Acts Vol I

^{- 1 1 /}f by the Yad n Articles of War original by the

e see Gazette of 106 ibid 1900, 292 819 and 879.

(Part II - The A ticles of War Title I - Enrolment, Attestation, Dismessal and Descharge)

ment, administer to the person an affirmation or oath in the prescribed form

- (4) The form of affirmation or oath prescribed under this article shall contain a promise that the person to be attested will be faithful to Her Majesty, Her heirs and successors, and that he will serve in Her Majesty's Indian Porces and go wherever he is ordered by land or sea. and that he will obey all commands of any officer set over him, even to the peril of his life
- (5) When a recruit is reported fit for duty, an affirmation or oath in the same form shall be administered to him in the prescribed manner by the command ng officer in front of the corps or such portion thereof or such members of the department as shall be present
- (6) After administering the affirmation or oath, the officer shall authenticate the attestation paper by his signature, and the person shall then be deemed to have been attested
- (7) Subject to any rules which may be prescribed, the Commander-in- Treatment of Chief in India, or the general officer of the Command, may direct that and attests any persons to whom these Articles apply as attested persons shall, for ton as of the purposes of these Articles, be deemed to be enrolled, and that any in certain persons to whom these Articles apply as enrolled persons shall, for the cases purposes of these Articles, be deemed to be attested

Article 2 -(1) Subject to the provisions of the Army Act,2 the Rank and 8 Governor General in Council may, by notification, 3 direct that persons tion, of any class subject to these Articles shall, for any of the purposes of these Articles, be deemed to be Native officers, warrant officers or noncommissioned officers, and.

- (2) Subject as aforesaid, any prescribed authority may issue an order giving a like direction with respect to any such person
- (3) Any notification or order issued under this article may be cancelled by the authority issuing the same, and,
- (4) Subject as aforesaid, any person of the said classes with respect to whom no such notification or order is in force shall, so far as may be, be deemed for all the purposes of these Articles to be of a rank inferior to that of a non commissioned officer
- (5) Should any question arise as to the rank of any other person sub ject to these Articles, or as to whether any such person is above or below a specified rank, the decision of the Governor General in Council thereon shall be conclusive

See footnote to Title I, Part II, supra.

^{*} Coll Stat Vol II

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(Part II - The Asticles of War Title I - Involvent, Astestation, Dismessal and Discharge)

(6) Every person subject to these Articles shill, for the purposes thereof, be deemed to be under the commanding officer of the corps or department (if any) to which he is attached, and, if not attached to any corps or department, under any officer who may for the time being be named as his commanding officer by the general or other officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the said general or other officer commanding

Provided that a general or other officer commanding shall not place any person under an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whom he can be placed

Dismissal and dis charge of commissioned officers

- ¹ Article 3—(1) Every Native officer shall be liable to dismissal from the service by the sentence of a general court martial, and to dismissal or discharge by order of the Governor General in Council, or of the Commander in Chief in India, or of the general officer of the Command to which he belongs
- (2) A Native officer dismissed under these Articles shall forfeit all claim to pension

Dismissal and d scharge of other persons

- ¹ Article 4 —(1) Every person subject to these Articles, other than a Native officer, shall be liable to—
 - (a) dismissal from the service by the sentence of any court martial empowered to try him and
 - (b) dismissal or discharge from the service by order of the Governoi General in Council, or of the Commander in-Chief in India, or of the general officer of the Command to which he belongs, or of the officer commanding the ²[division district or brigade] in which he is serving, or, if he belongs to a force not attached to a command, by order of the officer commanding such force

²Provided that if he is dismissed or discharged by order of an officer not subject to the authority of the Governor General in Council or of the Commander in Chief in India such dismissal or discharge shall

See footnote to Title I Part II supra

(Part II .- The Articles of War. Tetle I -Enrolment, Attestation, Dismissal and Discharge

not take effect until it has been approved by the Governor General in Council or by the Commander-in Chief in India, or, if he belongs to a command but is serving with a force not attached to a command, by the general officer of the command to which he belongs ?

1(2) Unattested recruits who, in the opinion of their commanding officer, are not likely to make good soldiers, and persons attested under these Articles who are serving in a cavalry corps and who have, in the opinion of their commanding officer, failed to become good riders, shall be liable to discharge from the service by order of the commanding officer of the corps or department to which they may belong

Provided that, in the case of persons attested under these Articles. this liability shall cease on the completion of their third year of service.

- 1(3) Every person so dismissed or discharged shall forfeit all claim. to pension
- ²Article 5 -(1) Every attested person of or below the rank of non commissioned officer who has been dismissed or discharged from the person dis service, and who subsequently re-enters the service without at the time charged and stating the fact of his dismissal or discharge, or showing his certificate re enhang of dismissal or discharge, may be dismissed the service by the officer false answer commanding the corps or department with which he is serving, and

missed or disor making at his attest. ation.

(2) Every attested person of or below the rank of non-commissioned officer who is discovered to have made a wilfully false answer to any question set forth in the attestation paper which has been put to him by, or by direction of, the officer before whom he appears for the purpose of being attested, shall, on conviction by court martial, be liable to suffer imprisonment (with hard labour and with or without solitary con finement) or such less punishment as is in these Articles mentioned 2 Article 6 -Every attested person who is dismissed or discharged Certificate to

certificate, in the English language and in the mother-tongue of such charged person (when his mother-tongue is not English), setting forth-

from the service, shall be furnished by his commanding officer with a person dis

- (a) the authority dismissing or discharging him,
- (b) the cause of his dismissal or discharge, and
- (c) the full period of his service in the army.

Sub articles (2) and (3) were substituted for sub article (2) of article 4 by the Indian Articles of War Amendment Act 1900 (I of 1900), General Acts, Vol \ This Act has been declared in force in the Sonthal Parganas by Regulation III of 1872-see Calcutta Gazette, 1901 Pt I, p 673

^{*} See footnote to Title I, Part II, supra

(Part II - The Articles of War, Title II - Military Offences Chapter I -Crimes punishable with Death or Transportation)

TITLE II

MILITARY OFFENCES

CHAPTER I

CRIMES PUNISHABLE WITH DEATH OR TRANSPORTATION.

Mutiny and sedition

Violence to

superior

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dischurged.

ng on or

Article 7 -Any person subject to these Articleswho begins, excites, causes or joins in any mutiny or sedition * * * *1

or who, being present at any mutiny or sedition, does not use his utmost endeavours to suppress the same,

2 for who, knowing or having reason to believe in the existence of any mutiny or sedition, or of any intention to mutiny or create sedition, or of any conspiracy, against the State],

does not, without delay, give information thereof to his commanding

other regiment or corps ".

or other surerior officer .- or Article 8 -Who uses or attempts to use criminal force to, or commits an assault on, his superior officer, whether on or off duty, 3 [know-

ing or having reason to believe him to be such] ,-or Article 9 -Who disobeys the lawful command of his superior offi-

Disobedience cer.-or Desertion.

* Article 10 -Who deserts or attempts to desert the service ,-or Article 11 - Who, without having first obtained a regular discharge from the corps or department to which he belongs, enlists or enrols him-

ment without having been self in any other corps or department,-or Article 12 -Who, being a sentry in time of war or alarm, or over Sentry sleep any State prisoner, treasure, magazine or dockyard, sleeps upon his quitting post

post, or quits it without being regularly relieved, or without leave .in time of ĐГ

Article 13 -Who, being a sentry, or on guard, plunders or wilfully Sentry plundering

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(Part II — The Articles of War Title II — Vilitary Offences Chapter I — Crimes punishable with Death or Transportation)

destroys or injures any property placed under his charge, or under

charge of his guard ,-or

Article 14—Who shamefully abandons or delivers up any garrison for the first or guard committed to his charge, or which it is his duty to defend,—or

Article 15 —Who treacherously makes known the watchword to any person not entitled to receive it according to the rules and discipline of

war .—or

Article 16 —Who directly or indirectly holds correspondence with, or communicates intelligence to, the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer ...or

Article 17 -- Who directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects any

enemy, or person in arms against the State ,-or

Article 18—Who, without proper authority, releases any Stat prisoner, enemy or person taken in arms against the State placed unde his charge, or who negligently suffers any such prisoner, enemy or pe son to escape,—or

Article 19 — Who, in presence of an enemy, or of any persons arms against whom it is his duty to act, shamefully casts away his ari or ammunition or intentionally uses words or any other means to indu any officer or soldier to abstain from acting against the enemy, or discourage such officer or soldier from acting against the enemy, or wotherwise misbehaves,—or

Article 20 — Who, in time of action, without authority, leaves commanding officer, or his post, or colours, or party to go in search

plunder ,-or

Article 21 — Who, in time of war, quits his guard picquet, part patrol, without being regularly relieved or without leave, --or

Article 22 —Who in time of war, or during any military opera uses criminal force to, or commits an assault on, any person brin provisions or other necessaries to the camp or quarters of any of Maiestr's forces.

or forces a safeguard, or, without authority, breaks into any hor other place for plunder or plunders injures or destroys any

garden or other property of any kind ,-or

Article 23 — Who, in time of war, or, during any military oper intentionally occasions a false alarm in action, camp, garrison or ters, or spreads reports by words or by letters calculated to create or despondency

. . . .

(Part II - The Articles of 7 ar Title II - Wilstary Offences Chapter I -Crimes punishable with Death or Transfortation)

TITLE II

MILITARY OFFENCES

CHAPTER 1

CRIMES PUNISHABLE WITH DEATH OR TRANSPORTATION

Mut ny and sedition.

Article 7 --- Any person subject to these Articles-

who begins, excites, causes or joins in any mutiny or sedition * * * * 1

or who, being present at any mutiny or sedition, does not use his utmost endeavours to suppress the same,

2 for who, I nowing or having reason to believe in the existence of any mutiny or sedition, or of any intention to mutiny or create sedition. or of any conspiracy, against the Statel,

does not, without delay, give information thereof to his commanding or other superior officer, -or

Violence to superior

Article 8 -Who uses or attempts to use criminal force to, or commits an assault on, his superior officer, whether on or off duty, a [knowing or having reason to believe him to be such] ,-or

Article 9 -Who disobers the lawful command of his superior officer,-or

Disobedience Desertion.

⁴ Article 10 —Who deserts or attempts to desert the service ,—or Article 11 - Who, without having first obtained a regular discharge from the corps or department to which he belongs, enlists or enrols him-

Re enlist ment w thout having been d scharged. Sentry sleepng on or qu tting post

self in any other corps or department,-or Article 12 -Who, being a sentry in time of war or alarm, or over any State prisoner, treasure, magazine or dockyard sleeps upon his post, or quits it without being regularly relieved, or without leave,-

in time of Sentry plun dering

or

war

Article 13 -Who, being a sentry, or on guard, plunders or wilfully

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(Part II — The Articles of War Title II — Wilstary Offences Chapter I — Crimes punishable with Death or Transportation)

destroys or injures any property placed under his charge, or under charge of his guard ,-or

Article I4 —Who shamefully abandons or delivers up any garrison fortress, post or guard committed to his charge, or which it is his dut to defend —or

Article 15 —Who treacherously makes known the watchword to an person not entitled to receive it according to the rules and discipline o war.—or

Article 16 —Who directly or indirectly holds correspondence with or communicates intelligence to, the enemy, or any person in arm against the State, or who coming to the knowledge of any such cor respondence or communication, omits to discover it immediately to hi commanding or other superior officer .—or

Article 77 — Who directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects an enemy, or person in arms against the State —or

Article 18—Who without proper authority releases any St prisoner, enemy or person taken in arms against the State, placed un his charge, or who negligently suffers any such prisoner, enemy or i son to escape —or

Article 19—Who, in presence of an enemy or of any persons arms against whom it is his duty to act shamefully casts away his ai or ammunition or intentionally uses words or any other means to ind any officer or soldier to obstain from acting against the enemy, or discourage such officer or soldier from acting against the enemy, or violerwise misbelaires,—or

Article 20—Who, in time of action, without authority, leaves commanding officer, or his post, or colours, or party to go in search plunder,—or

Article 21 — Who, in time of war, quits his guard, picquet, j patrol, without being regularly relieved or without leave,—or

Article 22 — Who, in time of war, or during any military op uses criminal force to, or commits an assult on, any person t provisions or other necessaries to the camp or quarters of any Majesty's forces,

or forces a safeguard, or, without authority, breaks introther place for plunder, or plunders, injures or de a garden or other property of any kind,—or

Article 23—Who, in time of war, or, during any milt, ay op intentionally occasions a false alarm in action, camp, garnson of ters, or spreads reports by words or by letters calculated to creat or despondency 50 Articles of D

Part II.—The Articles of War Title II — Unistary Offences. Chapter I — Crimes punishable with Death or Transportation. Chapter II.—Crimes punishable otherwise than by Death or Transportation.)

Article 24 -Shall, on conviction, suffer death, or transportation for life or for a term of not less than seven years,

or imprisonment (with or without hard labour, and with or without solitary, confinement) for a term which may extend to fourteen years,

or such other punishment as a general court martial is, by these Articles, empowered to award

Whenever any person is convicted of an offence specified in Article 7 and punishable with death under this Article, all his property, moveable and immoveable, shall be forfeited to the Government

CHAPTER II.

CRIMIS PUNISHABLE OTHERWISE THAN BY DEATH OR TRANSPORTATION.

²Anticle 25 —Any officer, medical subordinate or warrant officer who behaves in a manner unbecoming his position and character,—and any person subject to these Articles—

*Article 26 —Who is in a state of intoxication when on or after having been warned for any duty, or on parade, or on the line of march h.—or

Article 27 -Who strikes, or forces or attempts to force, any sentry ,

Article 28—Who knowingly harbours any deserter, or who, knowing, of having reason to believe, that any other person has deserted, or that any deserter has been harboured by any other person, does not immediately give notice to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended,—or

Article 29—Who knowing, or having reason to believe, that a per son is a deserter enlists him,—or

Article 30 — Who absents himself without leave, or, without sufficient cause, overstays leave granted to him,—or

³ Article 31—Who, being on leave of absence and having received information from proper authority that his corps or department has been

before the words for any duty
This article was substituted for the original article 3I by the Indian Articles of
War Amndinent Air. 394 (XII or 1894) s 13 that The articles are the same save that
the words corps or department were substituted for the words 'regiment or corps.

(Part II - The Articles of War, Title II - Military Offences, Chapter II .- Crimes punishable otherwise than by Death or Transportation.)

ordered on service, fails, without sufficient cause, to rejoin without

delay ,-or Article 32 -Who, without sufficient cause, fails to appear at the Failure to time fixed at the parade or place appointed for exercise or duty ,-or

Article 33 -Who, when on parade, or on the line of march, without o ting sufficient cause, or without leave from his superior officer, quits the parade or parade or line of march ,-or

Article 34 -Who, in time of peace, quits his guard, picquet or Quitting patrol, without being regularly relieved, or without leave .--or

Article 35 -Who, being in command of a guard, picquet or patrol, Refus ug to refuses to receive any prisoner duly committed to his charge, or without receive or proper authority releases any prisoner, or negligently suffers any prisoner prisoners.

to escape ,-or Article 36 -Who, being under arrest or in confinement, leaves his Leaving arrest or confinement before he is set at liberty by proper authority ,-or arrest

Article 37 - Who is grossly insubordinate or insolent to his superior Insubordinaofficer in the execution of his office .- or

Article 38 -Who refuses to superintend or assist in the making of Refusal to any field work, or other military work of any description, ordered to be military

made either in quarters or in the field ,-or ¹ Article 39 — Who impedes a provost marshal or an assistant provost marshal, or any officer or non commissioned officer or other person legally marshal exercising authority under or on behalf of a provost marshal, or, when called on, refuses to assist, in the execution of his duty, the provost marshal, assistant provost marshal, or any such officer, non commission-

ed officer or other person .- or Article 40 -Who still es or otherwise ill treats any soldier or other Striking person "[enrolled or] attested under these Articles being his subordinate subordinates

in rank or position ,-or Article 41 -Who commits extortion, or, without proper authority, Extortion.

exacts from any person carriage, porterage or provisions ,-or Article 42 - Who, in time of peace commits house breaking for the House purpose of plundering, or plunders, destroys or damages any field, gar- or plunder den or other property,-or

Article 43 -Who, being in command at any post, or on the march, Neglect and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any person in fair or market, or committed any riot or trespass, fails to have due jured by

parade

guard in time

super ntend

works Imped ng

break 1 g ing in t me

of peace ing to com pensate anhordinate.

E 2

VOL II

This article was substituted for the original article 39 by Act XII of 1894. * 14 General Acts Vol IV

These words were inserted by Act XII of 1894 s 15 General Acts, Vol IV

(Part II — The Articles of War Title II — Wilstary Offences Chapter II — Grimes punishable otterwise than by Death or Transportation)

reparation made to the injured person, or to report the case to the proper authority,—or

Article 44 —Who, by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person,—or

Article 45 —Who, directly or indirectly, requires, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enlistment or enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service,—or

Article 46 —Who, in time of peace, by any means whatever, intentionally occasions a false alarm in camp, garrison or cantonment,—or

1 Article 47 -Who-

- (a) designedly or through neglect kills, injures, makes away with or loses his horse or ill treats any animal used in the public service.—or
- (b) dishonestly or fraudulently removes, conceals or delivers to any person, or designedly or through neglect injures or loses his arms, clothes, tools, musical or surgical instruments, equipments, animunition, accourtements or regimental necessaries, or any such articles entrusted to him or belonging to any other person,—or
- (c) sells, pawns, destroys or defaces any medal or decoration granted to him by order of Her Majesty or of the Governor General in Council for service in the field or for general good conduct.—or

Article 48—Who attempts to commit suicide and does any act to wards the commission of such offence,—and

Article 49 —Any person subject to these Articles below the rank of warrant officer—

who, when off duty, appears, without proper authority, in or about camp or cantonments or in or about, or when going to or returning from, any town or bazar, carrying a sword, bludgeon or other offensive weapon,—or

Defiling places of worship. Taking bribes

Causing
false alarm
in time of
peace
Making
away with
reg mental
necessaries

Attempting suicide,

Appearing armed in camp

This article was substituted for the original article 47 by the Ind an Articles of War Amendment Act 1894 (VII of 1894) s 16 General Acts Vol IV

(Part II - The Articles of War Title II - Military Offences, Chapter II - Crimes punishable otherwise than by Death or Transportation. Chapter III - Crimes to be punished with Dismissal from the Service)

Article 50 -Who, being a sentry, in time of peace sleeps upon his Sentry post, or leaves it before being regularly relieved, or without leave, -or

sleeping on post in time of peace Absence from

Article 51 - Who, without proper authority, is found two miles or upwards from camp,-or

Article 52 -Who, without proper authority, is absent from his Absence from cantonment or lines after tattoo, or from camp after retreat-beating.

Article 53 -Shall, on conviction by any court martial competent to try him, be sentenced to such punishment, other than death or for offences transportation, as such court is, by these Articles, empowered to award

camp cantonment after tattoo Punishment

mentioned in

articles 20-52

CHAPTER III

CRIMES TO BE PUNISHED WITH DISMISSAL FROM THE SERVICE

Article 54 -Any person subject to these Articles-

I pubezzle-

who dishonestly misappropriates or converts to his own use any ment money, provisions, forage, arms, clothing, ammunition, tools, instruments equipments or military stores of any kind, the property of Government, entrusted to his charge on the public account, or for any military purpose,

or who dishonestly uses or disposes of such property in violation of any direction of a proper authority,

or who dishonestly receives or retains any such property, knowing or having reason to believe the same to have been dishonestly misappropriated or converted,-or

Article 55 -Who wilfully destroys or injures any property of Gov. Destruction ernment entrusted to him on the public account, or for any military of Govern

purpose ,-or Article 56 -Who, having been duly sworn or affirmed before any Giving talse court-martial or other military court competent to administer an oath evidence. or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true -

ment property

Article 57 -Shall, if convicted by a general court martial, be sen- Punishment tenced to be dismissed the service and to forfeit any arrears of pay and for offences mentioned in allowances due to him at the time of dismissal, and shall be punishable articles 54,

55 and 56

¹ I his article was substituted for the original article 57 by the Indian Articles of War Amendment Act 1894 (\II of 1894), s 17, General Acts \ol I\

(Part II - The Articles of War Title II - Military Offences Chapter
IV - Discrept Conduct)

also with imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to two years and shall, if convicted by a district court martial, be liable to any or all of the penalties which such court is competent to inflict

CHAPTER IV.

DISGRACEFUL CONDUCT

Malingering.

Article 58 -Any person subject to these Articles-

Who malingers or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity.—

or

Article 59 —Who, with intent to render himself or any other person

Wilfully causing hurt, Theft

hurt to himself or any other person,—or

Article 60 —Who commits theft in respect of any property of Gov
ernment, or of any officer or soldier, or of any other person in the
service, or of any military mess or band, or of any preson serving with
or attached to the Army, or who dishonestly receives or retains any such

unfit for service, voluntarily causes hurt or voluntarily causes grievous

or attached to the Army, or who dishonestly receives or retains any such property, knowing or having reason to believe it to be stolen,—or Article 61—Who dishonestly misappropriates or converts to his own use any property of Government entrusted to him for any purpose not

Embezzle ment of Government property not entrusted on public account

converted .--or

provided for in articles 54 and 55 or who dishonestly receives or retains any such property knowing or having reason to believe it to have been dishonestly misappropriated or

Obtain ng pens on by false state ment. Article 62 —Who obtains or attempts to obtain for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he hones or has reason to believe to be false, or does not know to be true, or by making or using a false entry in any book or record, or by making any document con taining a false statement, or by omitting to make a true entry or document containing a true statement.—or

Parnishing false returns ment containing a true statement,—or

Article 53 — Who know ingly furnishes a false return or report of the
number or state of any men under his command or charge, or of any
money, arms, ammunition clothing equipments, stores or other pro
perty in his charge, whether belonging to such men, or to Government,
or to any person in or attached to the Army, or who, through design or
culpable neglect, omits or refuses to make or send any return or report
of the matters aforesaid —or

-01

(Part II - The Articles of War Title II - Military Offences Chapter IF - Disgraceful Conduct Chapter F - Offences against Courtsmartial Chapter VI - Unspecified Offences)

Article 64 - Who does any other thing with intent to defraud, or to Other fraudulent cause wrongful gain to one person, or wrongful loss to another person, offences,

Article 65 -Who commits any * *1 offence of a cruel, indecent Cruelty or or unnatural kind, or attempts to commit any such offence and does any act towards its commission .---

2Article 66 -Shall, on conviction by a general or district court- Penalties for martial, be liable to any or all of the punishments, other than death or specified in transportation, which the court martial is competent to award

offences art cles 58 to 65

CHAPTER V

OFFENCES AGAINST COURTS MARTIAL

Article 67 -Any person subject to these Articles who, when duly Refusal to summoned to attend as a witness before a court martial, intentionally attend or be omits to attend or refuses to be sworn or make affirmation, or to answer any question, or to produce or deliver up any book or document which he may have been duly warned and called upon to produce or deliver up, or prevaricates, -- or

Article 68 -Who intentionally offers any insult or causes any Contempts. interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of a court martial while sitting ,-

Article 69 -Shall, on conviction by the same or by any other court- Punishment martial which is competent to try the oftender, be liable to " [any or all for offences of the punishments, other than death or transportation, which the court martial is competent to award]

specified in art cles 67 and 68

CHAPTER VI

Unspecified Offences

Article 70 -All offences not punishable with death, all neglects to Unspecified

The word other was repealed by the Indian Articles of War Amendment Act,

obey any garrison or other orders, and all acts and omissions, of which any person subject to these Articles is accused, shall, though not specified in these Articles, if they be prejudicial to good order and military discipline, be taken cognizance of and punished according to the nature and degree of the offence, act or omission by any court martial empowered to try the person guilty of such offence, act or omission

Abetment

² Article 7I—Every person who abets, within the meaning of the Indian Penal Code, ² any offence punishable under these Articles may keep be punished with the punishment hereinbefore provided in these Articles for such offence

TITLE III

JURISDICTION

CHAPTER I

COURTS MARTIAL

³Article 72 —For the purposes of these Articles, there shall be five kinds of courts martial, that is to say—

- (1) General courts martial.
 - (2) District courts martial
 (3) Regimental courts martial
- Hereinafter called ordinary courts martial
- (1) Summary general courts martial Hereinafter called extraordinary
 (5) Summary courts martial courts martial
 - 4 Ordinary Courts martial

Power to convene or d nary courtsmart al

Courts martial and

the Linds thereof.

*Article 73—(1) The following authorities shall have power to convene general or district courts martial, namely—

- (a) the Commander in Chief in India,
- (b) the general officer of the Command,

This article was substituted for the original article 71 by Act XII of 1894 a 21 General Acts Vol. IV

e 72 by the Indian Articles of War Vol IV inted were substituted for the ore il Acts Vol IV

(Part II .- The Articles of War Title III .- Jurisdiction, Chapter I --· Courts-martial)

- (c) any officer empowered in that behalf by warrant of the Commander-in-Chief in India or the general officer of the Command
- (2) The power of convening general or district courts-martial may be granted under clause (1), sub-clause (c), subject to such restrictions, reservations, exceptions and conditions as the Commander-in-Chief in India or the general officer of the Command granting the power may think fit.
- (3) Any warrant under this Article for convening general or district courts-martial, or either of them, may be addressed to an officer by name. or by designation of his office, or partly in one way and partly in the other, and may or may not, according to the terms thereof and the mode in which it is addressed, be limited to an officer named or be extended to any person for the time being performing the duties of such officer, or to the successors in command of such officer.

2 Article 74 -A general court-martial shall, if held in British India, Composition consist of not less than seven officers, unless that number, due regard of general courts. being had to the public service, is not available, in which case the court martial may consist of not less than five officers

Article 75 - Composition of General Court-martial appointed under Order in Council | Repealed by Act XII of 1894, s 24

Article 76 -A general court martial shall have power to try all per- Powers of sons subject to these Articles accused of mutiny or of any other offence such court punishable under this Act, and to pass sentences of-

Death.

Transportation for life or for any period not less than seven years,

Imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years.

Dismissal from the service.

Suspension from tank, pay and allowances for any stated period.

Degradation,

Loss of standing.

*[Reduction to a lower grade or to the ranks.] Corporal punishment not exceeding fifty lashes,

I orfeiture of additional pay, good conduct pay, and claim to pension.

Forfeiture of arrears of pay and allowances.

Stoppages

¹ For notification issued under this power, see Gazette of India, 1878 Pt 1, p 293

See first footnote on p 56 supra

These words were substituted for the words "reduction to the ranks by the Indiaa Articles of War Amendment Act 1894 (VII of 1894), s 25 General Acts, Vol IV

(Psit II - The Articles of War Title III - Jurisdiction Chapter I-Courts martial \

Whenever any person is convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the court may adjudge that all the rents and profits of his moveable and immoveable estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period

Articles 77 to 79 - Appointment, composition and powers of Detachment General Court martial, appointment of District Court martial and Garrison Court martial | Repealed by Act XII of 1894, s 24

Composition of district court martial

Article 80 -A district court martial shall consist of not less than five officers, unless that number, due regard being had to the public service, is not available, in which case the court may consist of not less

Officers com pos ng such courts

than three officers Article 81 -A district court martial may, when necessary, be com posed wholly of officers of the corps or department to which the accused belongs

Powers of such courts.

* 2 court martial shall have power Article 82 -A district * to try all persons subject to these Articles, other than commissioned * 2 made punishable by these Articles. officers, for any offence * and to pass sentences of-

Imprisonment (with or without hard labour, and with or without solitary confinement) for a term not exceeding oftwo years],

Dismissal from the service.

Suspension from rank, pay and allowances,

Degradation.

Loss of standing,

*[Reduction to a lower grade or to the ranks]

Corporal punishment not exceeding fifty lashes,

Porfeiture of additional pay, good conduct pay and claim to pension.

Forfeiture of arrears of pay and allowances,

Stoppages

*Article 82d -Whenever a general or district court martial is ordered to be composed of the smaller number of officers specified in article 74 or 80, the order convening the court shall expressly state that the

Convening order to larger num

These articles were substituted for the original articles 60 and 81 respectively by Act \II of 1894 s 26 General Acts \of IV
The words or garrison and other than mutiny were repealed by Act \II of 1894 s 27 These words were substituted for the words one year by Act XII of 1894 s 28

^{*}These words were substituted for the words reduction to the ranks by the Act XII of 1894 s 28

Articles 82A was inserted by Act VII of 1894 s 29

(Part II - The Articles of War. Title III .- Jurisduction, Chapter I .-Courts-martial.)

larger number of officers is not, due regard being had to the public ber of officers service, available; and that statement shall be conclusive evidence of anotavail the fact so stated.

Article 83 -A regimental court-martial may be appointed by the Appointofficer commanding any corps or department or detachment thereof or by any officer when in command of two or more corps or departments or court detachments thereof.

ment of regimental martial

Article 84 -A regimental court-martial shall consist of not less Composition than three officers

of regimental courtmartial Powers of such court.

Article 35 -A regimental court-martial shall have power to try all persons subject to these Articles and not above the rank of non-commissioned officer-

- (a) for any offence triable by a court-martial under these Articles except an offence punishable under articles 7 to 23 (both inclusive), articles 54 to 65 (both inclusive), or articles 171 to 173 (both inclusive), and,
- (b) with the previous sanction of the prescribed authority, for any of the offences so excepted

Article 85A -A regimental court martial shall have power to pass Powers as to any sentence which might have been passed by a district court-martial such courts for the like offence other than suspension from rank, pay and allowances

Provided that no sentence of imprisonment for a term exceeding six months, nor any of the additional punishments specified in article 135, shall be passed by a regimental court martial

² Article 86 -(1) The officers composing a court martial convened under the foregoing provisions shall, except as hereinafter provided, be British

officers when to be nome

- Native officers (2) The Governor General in Council, or the Commander-in-Chief in nated India or the general officer of the Command, or any officer empowered in that behalf by warrant of the Commander-in Chief in India or the general officer of the Command, may direct that any court-martial convened under these Articles shall be composed of British instead of Native officers
- (3) Any person subject to these Articles, who is under orders for trial by any court-martial, may claim to be tried by British officers.

¹ The articles 83 to 85A here printed were substituted for the original articles 83 to 85 by Act VII of 1894 s 30

The articles 86 to 89B here printed were substituted for the original articles 86 to 89 by the Indian Articles of War Amendment Act, 1894 (VII of 1894), s 31

(Part II - The Articles of War Title III - Jurisduction Chapter I - Courts martial)

(4) In all cases the right of making such a claim shall, before the court is convened, be explained to the person under orders for trial by the commanding officer, or some officer deputed by him in this behalf, and, when such a claim is made, the court shall be constituted accordingly

(5) A court martial convened for the trial of any person subject to these Articles, and serving with any British corps or detachment, may be composed of British officers if, in the opinion of the officer convening the court (such opinion to be expressed in the order convening the court and to be conclusive), Native officers are not available with due regard

to the public service for service on the court

¹ Article 87 —(I) Every general court martial shall be attended by a nudge advocate

(2) if no officer of the judge advocate general's department is available, the officer convening the court shall appoint a fit person to act as judge advocate at the trial

(3) No person under orders for trial or under trial by any court martial may, without the leave of the court, object to any person acting

or professing to act as judge advocate

(4) A British officer of not less than four years' service, hereinafter called the superintending officer, shall be appointed to superintend the proceedings of every court martial composed of Native officers which is not attended by a judge advocate

Article 88 -(1) At every court martial the senior officer shall sit

as president without special appointment as such

(2) In case of the death or unavoidable absence of the president, the next senior officer shall take the place of the president, without special appointment as such, and the trial shall proceed if the court is still composed of not less than the smallest number of officers of which it is required by these Articles to consist

Article 89—No finding or sentence of a general, district or regimental court martial shall be valid, except so far as it may be confirmed as provided by these Articles

¹ Article 89A —(1) The following authorities shall have power to confirm the findings and sentences of general and district courts martial —

(a) the Commander in Chief in India,

- (b) the general officer of the Command, as regards troops under his command wherever stationed,
- (c) the officer commanding a force not attached to a Command;

Judge advo cate and appointment of super n tending officer for Native court martial

Pres dent

sentence
invalid
without
confirmat on
By whom
find ngs and
sentences
may be con
firmed or
otherwise
disposed of

Finding and

² See second footnote on preceding page

(Part II .- The Articles of War. Title III - Jurisdiction. Chapter I --Courts-martial.)

- (d) any officer empowered in that behalf by warrant of the Commander-in-Chief in India or the general officer of the Command.
- 15(c) in the case of any person subject to these Articles, who is serving out of India, not under the orders of the Commander in-Chief in India, in any station beyond the seas as defined in section 190, clause (25), of the Army Act. the officer who convenes the court-martial or who has authority to convene such court-martial]

Provided that, except on active service or beyond the limits of India, no warrant issued under this article shall be deemed to empower an officer to confirm any finding or sentence in the case of an officer, medical subordinate or warrant officer, or a sentence of death, transportation or imprisonment for a term exceeding seven years in any case whatever

- (2) The provisions of article 73, clauses (2) and (3), shall, with the necessary modifications, apply to warrants issued under this article
- (3) The officer who convenes a regimental court-martial or the officer having authority to convene such court-martial, at the date of the submission of the finding and sentence thereof, shall have power to confirm the same

2Article 89B - Subject to such restrictions as may be contained in Power of any warrant issued under the last preceding article, the confirming officer to officer may, when confirming the sentence of a court-martial, mitigate m tigate, or remit the punishment thereby awarded, or commute that punishment commute for any less punishment or punishments to which the offender might have sentence been sentenced by the court-martial

Provided that a sentence of transportation shall not be commuted to a sentence of imprisonment for a term exceeding the term of transportation awarded by the court

SExtraordinary Courts-martial

"Article 90 -The following authorities shall have power to convene Convening of a summary general court-martial, and such a court-martial may be summary

(a) in any place, whether within or beyond British India, by an martial officer empowered in this behalf by an order of the

This clause was added by s 2 of the Indian Articles of War (Amendment) Act,

(Part II - The Articles of # ar. Title III - Jurisdiction Chapter I - Courts martial)

Governor General in Council or of the Commander in Chief in India or of the general officer of the Command.

(b) by an officer commanding any detached portion of Her Majesty's troops upon active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary general court martial

Article 91 - 2 A summary general court martial shall consist of

not less than three officers, who may be either British or Native, or both

British and Native officers, as the officer convening the court thinks fit

Compostion of summary general courts martial.

Article 92—A summary general court martial shall have all the powers of a general court martial and, subject to any instructions contained in the order convening the court, its sentence shall be valid, and may be carried out forthwith in case it does not exceed that which a district court martial is empowered to pass, and in any other case when

Powers of a summary general courtmartial

confirmed by the authority convening the court

Article 93 -(1) A summary court martial may be held-

Convening and con stitution of and persons triable by, a summary court mart al

- (a) by the commanding officer, being a combatant officer, of any corps or department of Her Majesty's Indian forces, or of any detachment of those forces,
- (b) by the commanding officer of any British corps or detachment to which Native combatant details subject to these Articles are attached
- (2) At every summary court martial the officer holding the trial shall alone constitute the court, but the proceedings shall be attended throughout by two other officers, British or Native, who shall not, as such, be affirmed or sworn.
- (3) The proceedings shall be recorded in the English language, and, when closed, shall be signed by the officer holding the trial, and by the officers attending thereat
- (4) A summary court martial may try any person subject to these Articles and under the command of the officer holding the court, except an officer, medical subordinate or warrant officer
- (5) Any member of an army hospital corps may be tried by summary court-martial by any officer authorized in this behalf by the officer commanding the division, district, brigade or station to which the alleged offender belongs

See third footnote on preceding page The brackets and figure (f) in article 91 and sub article (f) of he rame article was Topesled by a 3 of the Indian Articles of War (Amendment) Act, 1904 (XIII of 1904), General Acts Vol. VI

(Part II - The Articles of Wat. Istle III - Jurisdiction, Chapter I -Courts-martial. Chapter II - Procedure

Article 94 -A summary court-martial may try any offence punish- Offences able under any of these Articles

Provided that when there is no grave reason for immediate action, courtand reference can, without detriment to discipline, be made to superior authority, a summary court martial shall not try without such reference any of the following offences, namely -

- (a) any offence punishable under any of the articles 7 to 23 (both inclusive), or articles 54 to 65 (both inclusive), or article 171.
- (b) any offence against the officer holding the court
- Article 95 -(1) A summary court martial held by the commanding Powers of a officer of a corps or department may pass any sentence which can be summary passed under these Articles, except a sentence of death or transportation, martial or of imprisonment for a term exceeding one year

- (2) A summary court martial held by any other officer may pass any sentence which can be passed under these Articles, except a sentence of death or transportation, or of imprisonment for a term exceeding six
- months 1 Article 96 -The finding and sentence of a summary court martial Finding and shall not require to be confirmed, but may be carried out at once.

Provided that, if the officer holding the trial is of less than five years' service, he shall not, except on active service, carry into effect any sentence until it has received the approval of a superior military officer commanding not less than a corps

Article 97 -The proceedings of every summary court martial Transmission shall, without delay, be forwarded to the officer commanding the district, of proceed or the division or brigade, within which the trial was held, or to the mark prescribed officer and such officer or the Commander in Chief in India courts or the general officer of the Command, or, when the court is held in a force not attached to a Command, the officer commanding the force, may, for reasons based on the merits of the case, but not on any merely technical grounds, set aside the proceedings

CHAPTER II.

PROCEDURE

Article 98 -No person subject to these Articles shall be tried or Limitation punished by a court martial for any military offence after the expiration of trals. of three years from the date of such offence, unless the offender, by

(Part II - The Articles of War. Title III - Jurisdiction Chapter II -Procedure)

reason of absence or of some other manifest impediment, could not be arrested or confined and brought to trial within that period, in which case he shall be liable to be tried at any time not exceeding two years after such impediment shall have ceased

Place of trial

Article 99 -- Any person subject to these Articles who commits any offence against them may be tried and punished for such offence in any place whatever in the same manner as if the offence had been committed in such place

Arrest or confinement of accused

- Article 100 -(1) Whenever any person subject to these Articles is accused of any offence which his commanding or other superior officer considers should be tried by court martial, such officer shall order the accused to be placed in military custody until he can be tried by a court martial or is discharged by proper authority
 - (2) No such person shall be detained in military custody longer than

is necessary for the purposes of justice

Article 101 - [Judge Advocate] Repealed by Act XII of 1894, section 34

Interpreter

- 2 Article 102 -(1) An interpreter shall be appointed to every courtmartial
- (2) If no duly qualified interpreter is available at the station or place where the court martial sits, the officer appointing the court or the officer commanding in the district or place within or at which the trial is to be held, shall appoint any competent person to perform the duty of interpreter
- (3) When no other qualified or competent person is available, the superintending officer, or, in the case of an European court, the president, shall perform the duty of interpreter
- (4) In the case of a trial by a summary court martial, the officer holding the trial, or one of the officers in attendance thereat, may perform the duty of interpreter if no other competent interpreter is available
 - (5) No interpreter shall, as such, have a vote upon any matter

D santution of courts

- Article 103 -(1) When a court martial after the commencement of the trial is reduced below the smallest number of officers of which it is by these Articles required to consist, it shall be deemed to be dissolved
- (2) If, on account of the illness of the prisoner before the finding, it is impossible to continue the trial, a court martial shall be dissolved

¹ Substituted for the original article 100 by Act VII of 1894 s 33 General Acts

Vol IV stituted for the original article 100 by Act XII of 1894 a 25

'Substituted for the original article 102 by Act XII of 1894 a 25

Act XII of 1894, a 36

(3) Where a court-martial is dissolved under this article, the prisoner may be tried again

Article 103A -The president of a court-martial may, on any power to deliberation among the members, cause the court to be cleared of all clear court. other persons

² Article 103B -The court may, when it thinks fit, view any place

Power to view place

65

Article 104 -In the case of any * * * * 2 court martial composed Conduct of of European commissioned officers * * * *2 the president shall proceedings. conduct the proceedings Article 105 -Risaldar Majors and Subahdar Majors shall take pre- Precedence

cedence according to the dates of their commissions and above all officers

Subabdars or Risaldars Sirdar Bahadurs and Bahadurs shall take rank only according to their respective commissions of Risaldar Major, Subahdar Major, Risaldar, Rısaıdar, Subahdar or Jemadar

Risaldars shall take rank with Subahdars, according to the dates of their commissions as Risaidars, or if they have not been Risaidars then according to the dates of their commissions as Risaldars

Article 106 -Trials by courts martial may be carried on at any time 1 ime of without restriction

journment

The date and hour of the court's original assembly shall be fixed and re by, or under the orders of, the convening officer, but the adjournment assembly and re assembly of a court martial shall be determined by the court itself

Article 107 -At all trials by 3 [ordinary] courts martial, as soon as Challenges. the court is assembled, the names of the president and members shall be read over to the prisoner, who shall thereupon be asked by the officer conducting the proceedings, whether he objects to being tried by any officer sitting on the court

If the prisoner objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall in the absence of the challenged officer, decide on the objection

When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been

See third footnote on preceding page

The words General court martial appointed under an order in Council or of any other after the word any and the words and figures under article 96 or 97 after the word officers were repealed by Act \ld 10 figures

The word ordinary was substituted for the words courts martial other than court martial appointed under an order in Council or summary by Act XII of 1894 8 38 TOL II

(Part II - The Articles of War, Title III - Jurisdiction
Procedure)

Chapter II-

Interpreter's

filled by another officer to whom no objection is made or admitted, the court shall proceed as hereinafter provid

Article 108—The officer conducting the proceedings shall then administer to the interpreter, or, when necessary, shall himself make as interpreter an affirmation or eath as follows—

"I solemnly affirm, in the presence of Almighty God, that I will faithfully interpret and translate the proceedings of this court, and that I will not divulge the sentence until it shall have been published by authority, and further, that I will not disclose or discover the vote or opinion of any particular member of the court unless required to give evidence thereof by a court of justice or court martial, in due course of law."

When oath is made instead of affirmation, the oath shall commence—
"I do swear that I will faithfully interpret," etc , and shall be in all other respects in the above form, and shall end with the words

Affirmation or oath of interpreter] "So help me God"

Oaths of president and members Article 108A —At a summary court martial the interpreter shall make affirmation or oath down to the words "published by authority" only

Article 109 —The interpreter, or the officer conducting the proceed ings, shall then administer to the president and each of the members of the court martial an affirmation or oath in such of the following forms as shall be appropriate —

For European Officers

"II solemnly affirm, in the presence of Almighty God, that I will duly administer justice, according to the Indian Articles of War, without partiality, favour or affection, and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases, and that I will not divulge the sentence of the court until it shall be published by authority and, further, that I will not disclose or discover the vote or opinion of any particular mem her of the court, unless required to give evidence thereof by a court of justice or a court martial, in due course of law".

When cath is made instead of affirmation, the cath shall commence—

"I do swear that I will duly administer justice," etc, and shall be in all other respects in the above form, and shall end with the words "So help me God"

Article 108A was inserted by the Indian Articles of War Amendment Act 1894 (XII of 1894) a 39 General Acts Vol. IV

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For Native Officers of the Mussulman or Hindu religion, or of any other religion for which it may be appropriate

" T solemnly affirm, in the presence of Almighty God, that I will duly administer justice according to the Indian Articles of War, without partiality, favour or affection, and if any doubt shall arise. then, according to my conscience, the best of my understanding, and the custom of war in the like cases, and that I will not divulge the sentence of the court until it shall be published by authority, and, further, that I will not disclose or discover the vote or opinion of any particular mem ber of the court, unless required to give evidence thereof by a court of justice or a court martial, in due course of law "

Article 110 -The interpreter, or any other European officer of the Judge Ad court, shall then administer to the judge advocate, or superintending vocate s

officer, the following affirmation or the following oath -

solemnly affirm in the presence of Almighty God, that I will not, upon any account whatsoever disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice or a courtmartial, in due course of law, and that I will not, unless it be necessary for the due discharge of my official duties disclose the sentence of the court until it shall be published by authority "

When oath is made instead of affirmation the oath shall commencedo swear that I will not, upon any account whatso ever, disclose," etc., and shall be in all other respects in the above form,

and shall end with the words "So help me God

Article 111 - Every person giving evidence at a court martial shall Oaths of be examined on oath, or on affirmation where affirmation is appropriate and admissible, and shall be duly sworn or affirmed in such of the following forms as may be appropriate -

For Europeans and persons professing the Christian religion

do swear that what I shall state shall be the truth, the whole truth, and nothing but the truth So help me God "

۲'n solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth "

For Mussulman, Hindu or other Nature Witnesses

" T solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth "

NOT II

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Oaths to be binding on conscience Article 112 —If none of the forms of oath or affirmation prescribed in articles 108 to 111, both inclusive, are appropriate to any officer of a court martial or any witness, such officer or witness shall make oath or affirmation to the purport hereinbefore prescribed, in such form as the court ascertains to be according to his religion or otherwise binding on his conscience

Re swearing in case of several trials

Article 113 —When more truls than one are held by the same courtmartial, every officer of the court and every witness before the court shall make a fresh oath or affirmation, as hereinbefore prescribed, notwithstanding any previous oath or affirmation

Article 114 -[Presumptive evidence of desertion] Repealed by Act XII of 1894, s 40

Reference by prisoner to Government officer Article 115—If at any trial for desertion, absence without leave, overstaying leave, or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorized absence, and refers in support thereof to any officer in the civil or military service of Government, or if it appears that my such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn until his reply is received.

The written reply of any officer so referred to shall, if signed by him, he received in evidence, and have the same effect as if made on eath or affirmation before the court

If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this article, the convening officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another court martial

Conviction of one offence permiss ble on charge of another Article 116 -(1) A prisoner charged before a court martial with uteriton may be found guilty of attempting to desert or of being absent without leave

- (2) A prisoner charged before a court martial with attempting to desert may be found guilty of desertion or of being absent without leave
- (3) A prisoner charged before a court martial with any one of the following offences, that is to say, theft, dishonest misappropriation or conversion criminal breach of trust, or dishonestly receiving or retaining stolen property, may be found guilty of any other of those offences.
- (4) A prisoner charged before a court martial with any other offence under these Articles may, on failure of proof of an offence having been

¹ This article was substituted for the original article 116 by the Indian Articles of War Amendment Act 1894 (XII of 1894) 3 41

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committed under circumstances involving a more severe punishment, be found guilty of the same offence as having been committed under circumstances involving a less severe punishment

1 1rticle 117 -(1) When any person subject to these Articles has Evidence of been convicted by a court martial of any offence, such court martial previous convicted by a court martial of any offence, such court martial previous and shall enquire into and receive and record evidence of, any previous general convictions of such person, either by a court martial or by a criminal court, and shall further enquire into and record the general character of such person

- (2) Evidence received under this article may be either oral, or in the shape of entries in or certified extracts from court martial books or other official records and it shall not be necessary to prove the signal ture to such certified extracts nor shall it be necessary to give notice be fore trial to the person tried that evidence as to his previous convictions or character will be received
- (3) At a summary court martial the commanding officer holding the trial may if he thinks fit record any previous convictions against the offender and his general character as of his own knowledge instead of requiring them to be proved under the foregoing provisions of this article

1 1rticle 1174 - Subject to the provisions of the last foregoing arti General rule cle the Indian Evidence Act 1872 2 subject to such modifications there of and to such additional rules of evidence as the Governor General in Council may by notification direct shall apply to all proceedings be fore a court martial

Article 118 -The members of a court martial shall preserve order, Voting of and, in giving their votes upon any matter shall begin with the junior members. ın rank

Except where otherwise specially provided, every decision shall be passed by a majority of votes and where there is an equality of votes as to either finding or sentence the decision shall be in favour of the person tried

In matters other than the finding or sentence the president shall have a casting vote

3Article 119 -No sentence of death shall be passed by any court- Majority martial without the concurrence of two thirds at the least of the members requisite to sentence of of the court

The articles 117 and 117A here printed were substituted for the original article 117 by Act VII of 1894 s. 42
 For Act I of 1872 see infra
 This article was substituted for the original article 119 by Act VII of 1894 s. 43

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Revision of finding or sentence.

- Article 120 -(1) The finding or sentence of any court-martial may be once revised by order of the officer authorized to dispose of the proceedings, and, on such revision, the court, if so directed by him, may take additional evidence
- (2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers shall be unavoidably absent
- (3) In case of such unavoidable absence, the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided it still consists of the smallest number of officers of which such court is by these Articles required to consist

Procedure to be generally followed

Article 121 -The procedure laid down in the articles 106 to 119 (both inclusive) shall be adopted at all trials by courts-martial save when otherwise specially ordered or provided

Summoning Witnesses. and produc tion of doorments.

2Article 122 -(1) The judge advocate in the case of a general courtmartial, and the officer ordering the trial in the case of any other courtmartial, may, by summons under his hand, require the attendance before the court, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing

- (2) In the case of a witness amenable to military authority, the summons shall he sent to the officer actually commanding the corps, department or detachment to which he belongs, and such officer shall serve it upon him accordingly
- (3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate
- (4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with convenient certainty
- (5) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to any letter, post- I of 18 card, telegram or other document in the custody of the postal or tele-

graph authorities (6) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, high court or court of ses

sion, wanted for the purposes of any court-martial, such magistrate or

This article was substituted for the original article 120 by the Indian Articles of War Amendment Act, 1894 (XII of 1894) s 45
This article was substituted for the original article 122 by Act XII of 1894, s 44 Infra.

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court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

- (7) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police. wanted for any such purpose, he may require the postal or telegraph department, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magis trate, chief presidency magistrate or court
- Article 123 -(1) Any witness duly summoned, and any person who Contempts of commits any contempt of court in the presence of a court-martial, or any offence described in article 56, 67 or 68, shall, if subject to these Articles, be proceeded against as the court may direct

(2) If any such witness or person is not so subject, the president of the court martial may certify the offence under his hand to the court of any magistrate within the local limits of whose jurisdiction it was committed, and the magistrate, may thereupon take cognizance of the case, and, after hearing anything which the accused may desire to say, dispose of it as if the offence had been committed in a proceeding in

the court of such magistrate Article 124 -(1) No president or member of a court martial, no Privileges of judge advocate or superintending officer, no party to any proceeding persons attending before a court martial, or his legal practitioner or agent, and no witness co ris-mar acting in obedience to a summons to attend a court martial, shall, while tal, proceeding to, attending on or returning from, a court martial, be liable to arrest under civil or revenue process

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

Articles 125 to 129 - [Summary courts martial, signature and transmissions of proceedings | Repealed by Act XII of 1894, s 45

CHAPTER III

SENTENCES

Article 130 -(a) Any general court martial may for any offence Sentences falling under articles 7 to 23, both inclusive, and for such offences only, courtssentence any person subject to its jurisdiction to death, or to transporting martial tion for life or for any period not less than seven years, or to imprison-

¹ These articles were substituted for the original articles 123 and 124 by Act XII of 1894 * 44

(Part II - The Articles of War. Title III - Jurisduction Chapter III - Sentences)

ment (with or without hard labour, and with or without solitary confinement) for any period not exceeding fourteen years

- (b) Any general court-martial may, for any offence falling under article 54, 55 or 56 of these Articles, sentence any person as aforesaid to the penalties attached to such offences in article 57, and may, for any other disgraceful conduct, award the penalties attached to that offence in articles 136, 137 and 138
- (c) Any general court martial may, in any case where no special punishments are prescribed, or, in addition to any special punishment, where so authorized, sentence any person amenable thereto to any punishment specified in articles 131, 132, 133, 135, 137 and 138
- (d) No court martial, other than a general court martial, shall have power to award a sentence of death, transportation or imprison ment exceeding '[two years]

Any general court murtial may sentence any commissioned officer to be dismissed the service or to be suspended from runk, pay and allow ances for any stated period, or to be placed one or more steps lower in the list of his rank

No court martial, other than a general court martial, shall have power to try or punish a commissioned officer

²Article 131—Dismissal from the service may accompany any other sentence passed by a court martial

Article 132—An, court martial may sentence a non commissioned officer to be reduced [to a lower grade or] to the ranks, or to be placed one or more steps lower in the list of his rank.

or may sentence any person subject to these Articles below the rank of warrant officer to be dismissed the service, or to suffer corporal pun ishment not exceeding fifty lashes, or to imprisonment with or without hard labour, and with or without solitary confinement, for such periods as are hereinafter prescribed

*Article 133—In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with inter vals between the periods of solitary confinement of not less duration than such periods, and, when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals be-

Dismissal

Reduction, dismissal, corporal punishment and imprison ment.

Solitary confinement tion or reward

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tween the periods of solitary confinement of not less duration than such periods

1 1rticle 131 -A non commissioned officer sentenced by court martial to any of the punishments specified in the second paragraph of article

132 shall be deemed to be reduced to the ranks

14rticle 135 -On a conviction of any offence, a general, summary general or district court martial may, in addition to any other punish ment which it is empowered to award, sentence the offender to forfeit all advantage as to additional may and claim to pension on discharge which might otherwise have accrued from the length or nature of his former service or to forfeit all such advantage absolutely, whether it has accrued from former service or may accrue from future service or to forfest service for the purpose of promotion increased pay or pen sion or any other prescribed purpose or to forfeit any military decora-

¹Article 136 -Whenever a person subject to these Articles is con victed by a court martial, his good conduct pay shall subject to any good conduct rules or orders which may from time to time be made with the pre vious sanction of the Governor General in Council, cease

Article 137 -On a conviction for any offence if the offender is Forfesture entenced to dismissal from the service or if his sentence involves such of arrears dismissal he may further be sentenced to forfeit if the court shall so

direct -(a) all or any arrears of pay and allowances or other public money due to him at the time of his dismissal or

(b) such portion thereof as may be required to make good any proved loss or damage arising out of his offence

* Any court martial in addi Stoppages. tion to any punishment other than or not involving dismissal may sentence any person as aforesaid to be put under stoppages to the ex tent specified in article 139 until any proved loss or damage arising out of his misconduct be made good

Article 139 -Stoppages under article 138 shall not be awarded whe ther under one or more than one sentence to a greater extent than 3[one half of the offender's] monthly pay and allowances and shall not be so awarded as to extend beyond one year

Reduction of non commis s oned officers to renks

Forfe ture of nav and pension

Stoppage of pay on con viction. k

Extent of stoppages.

¹ These articles were substituted for the or gunal articles 134 to 137 respect vely by
¹ The first paragraph and the word
are repealed by Act VII of 1834 s 50
¹ These words were substituted for the words
in the case of any other person one half of his
ment Act 1904 (VII of 1834) s 51

¹ These words were substituted for the words
in the case of an officer two-thirds or
by the Indian Articles of War Amend
ment Act 1904 (VII of 1834) s 51

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Any public money issued to the offender within the said period of one year shall, for the purposes of this article, be deemed to be pay and allowances

Article 140 -Whenever a sentence of transportation or imprison-Sentence of ment is passed by any court martial upon an offender already under sentence of transportation for a limited term, or of imprisonment, the court may award transportation or imprisonment to commence on the expiration of such previous sentence, notwithstanding that the aggregate of any terms of imprisonment may thus exceed the limit of imprisonment which such court is by these Articles empowered to award

Form of sentence of death.

transportation or im

prisonment

on person already sen

tenced

Article 141 -In awarding a sentence of death, a general court martial shall, at its discretion, direct that the offender shall "suffer death by being hanged by the neck until he be dead," or shall "suffer death by being shot to death "

CHAPTER IV

CONFIRMATION AND COMMUTATION OF SENTENCES

Articles 142 to 149 -[Repealed by Act XII of 1894, s 52]

CHAPTER V

EXECUTION OF SENTENCES

Transporta tion. a

Article 150 -Whenever the sentence of a general court martial awarding transportation is duly confirmed, or whenever a sentence of death is duly commuted to transportation, the offender shall, 'Tas soon as may be convenient], be delivered over with a warrant of commit ment containing an authenticated copy of the sentence or commuted sentence to the officer as charge of "[a pail], and such officer shall give effect to the sentence accordingly, under such order as he may receive from the Local Government

Imprison ment with hard labour

Article 151 -Whenever the duly confirmed sentence of any court martial awards imprisonment with hard labour, or whenever the sen tence of any court martial is duly commuted to such imprisonment, the offender shall, '[as soon as may be convenient], be delivered over with a warrant of commitment, containing an authenticated copy of the said sentence or commuted sentence, to the officer in charge of '[a nail].

The words as soon as may be convenient were inserted and for the words the nearest jail the words a jail were substituted by Act XII of 1894 s 53

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and such officer shall detain the offender, under the rules in force, in such sail, according to the exigency of the warrant, or until he is dis charged by due course of law

Provided that in the case of a sentence of such imprisonment for a period not exceeding three months, the confirming or superior authority or, in the case of a summary court martial, the commanding officer holding the trial may direct that the sentence shall be undergone in military custody

Article 152 - Subject to the control of the Commander in Chief in Place of im

India], '[the general officer of the Command] may, as occasion requires, prisonment. direct that any person under his command and sentenced under these Articles to imprisonment, shall be confined in any jail or other fit place for confinement, situate within the local limits of such command, or may order his removal from any place of confinement under military control to any other such place, or to any jail or other fit place of confinement situate within such local limits

'[Subject as aforesaid,] the officer comanding any force not at tached to 5 a Command shall have the like powers so far as regards persons under his command and jails or other places of confinement situate within the local limits of such command

Article 153 - When any person subject to these Articles is confined in any jail or other place not subject to military control, under a sen tence of transportation or imprisonment, whether passed by a court martial or by a court of criminal justice, the Government of India, or the Local Government of the Presidency or place wherein such person is confined, may order his transfer to military custody,

or may order his removal from one to any other such place of confinement within the territories of such Government

The period during which such person is in custody during his re moval shall be reckoned as part of his term of transportation or imprisonment

Article 154 -Any person subject to these Articles in receipt of public Forfeiture of pay, who is imprisoned in any place under the sentence, or commuted paydering sentence, of a court martial, or a court of criminal justice, shall, during ment such imprisonment, if his sentence does not involve dismissal under article 155 or article 157, forfeit all pay and allowances, and be entitled

This proviso was added by Act AII of 1894 s 54 the Commander in Chief of a Presi denc any Presidency" by Act VII of 1894 a 55

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to subsistence only, according to the rates prescribed in the regulations of the Government to which he is subject

And any such person in confinement in any place whatsoever, whether as a punishment by his commanding officer, or under any charge of which he is subsequently convicted, shall, during such confinement, forfest all pay and allowances, and be entitled to subsistence only, ac cording to the regulations of the Government to which he is subject

Striking convict off strength of regiment

Article 155 - Every person sentenced by any court martial, or by any court exercising jurisdiction in criminal cases, to transportation or to imprisonment with hard labour for any term exceeding three months shall, in the case of a sentence by a court martial, from the date of confirmation of such sentence and in the case of a sentence by a criminal court, from the date of such sentence '[or, if an appeal be preterred against such sentence and fail from the date of the disposal of such appeal] be struck off the strength of the regiment, corps or department to which he belongs

2 Provided that on active service any such person may, by order of the officer empowered under these Articles to confirm or otherwise dispose of the proceedings of the trial be retained to serve in the ranks, and his service therein shall be recloned as part of his term of trans portation or imprisonment

Articles 156 to 159 - [A on readmission of connict dismissal with agnoming publication of sentence for disgraceful conduct, sentences of summary courts martial | Repealed by Act VII of 1894, s 59

CHAPTER VI

PARDONS AND REMISSIONS

Pardons and remissions.

3Article 160 -When any person subject to these Articles has been convicted by a court martial of any offence,-

- (a) the Governor General in Council, or,
- (b) when the person has been convicted of any offence other than a civil offence, the Commander in Chief in India or the general officer of the Command,

may,-

(1) pardon the person.

These words were inserted by Act \II of 1894 s 57
This proviso was added by Act \II of 1894 s 57
This proviso was added by Act \II of 1894 s 58
This article was substituted for the original article 160 by Act \II of 1894 s 60

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- (2) remit wholly or in part any punishment awarded to him.
- (3) order the restoration to him of any service or other advan tage forfeited under his sentence, or
- (4) re admit him to the service when he has been dismissed there from

Provided that the general officer of the Command shall not exercise the powers conferred by this section in respect of any person, unless-

- (1) the person was under his authority when sentenced, and
- (2) the person is still in the service, or, if the person has been dismissed from the service the corps or department from which he was dismissed has since continued under the authority of that officer

Article 161 -Any officer in charge of a jail on receiving a notifical tion under the hand of a Secretary to the Government of India,

Release of

or under the hand of the '[Commander in Chief in India or the general officer of the Command or of the officer com manding any force not attached to a Commandl, or any afdivision, dis trict or brigade] that the sentence under which any person subject to these Articles is imprisoned in such tail has been annulled or remitted. or that any such person has been pardoned under article 160 shall, on the authority of such not fication alone immediately release the prison er or return him to military custody

4 Preservation of Proceedings

*Article 161A -(1) The proceedings of all general courts martial Preservation shall be preserved by the judge advocate general for not less than seven ings of years and the proceedings of summary general courts martial and dis trict courts martial for not less than three years from the date of the confirmation of the finding and sentence

courts mar

- (2) The proceedings of regimental and summary courts martial shall be preserved for three years with the records of the corps or department to which the prisoner belonged
- (3) Every person tried by a court martial shall be entitled, on de mand at any time after the confirmation of the finding and sentence

The vords or to the Government of Fort St George or to the Government of The vords or to the Government of Fort St George or to the Government of Bombav vere repealed by Act \110 1394 s 61

These words were substituted for the words Commander in Chief of any Previdency or of the officer commanding any force not attached to a Presidence by Act \11

of 1894 s 61 * Substituted for the words divi ion or district by the Indian Articles of War (Amendment) Act 1905 (V of 1905) General Acts Vol VI * This heading and article 161A were inserted by Act XII of 1894 \$ 62.

[1869 : Act V.

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Chapter F11-

where such confirmation is required, and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceedings a copy thereof, including the proceedings upon revision, if any, upon payment for the same at the prescribed rate

CHAPTER VII

REGIMENTAL COURTS OF ENQUIRY.

'Article 162—(I) When any person subject to these Articles has been absent without due authority from his duty for a period of sixty days, a Court of Enquiry shall, as soon as practicable, be assembled and, upon affirmation or oath administered in the prescribed manner, shall er quire respecting the absence of the person, and the deficiency, if any, of property of the Government entrusted to his care, or of his arms, ammu nition, equipments, instruments, clothing or necessaries, and, if satis fied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court martial book of the corps or denartment a record of the declaration

(2) If the person declared absent does not afterwards surrender, or is not apprehended, the record shall have the legal effect of a conviction of desertion.

(3) If the person declared absent surrenders or is apprehended, the record or a copy thereof, purporting to bear the signature of the officer having the custody of the court martial book, shall, on the trial of the person for desertion, be presumptive evidence of the facts therein recorded, and, on proof of the identity of the prisoner with the person therein mentioned, he may be found guilty of desertion and of the deficiency, if any, therein recorded

Article 163 —No person subject to these Articles shall be entitled to any pay or allowances or other public money, or to reckon service, during any absence as a prisoner of war

But when such person rejoins the service, enquiry shall be made by a court-martial into the circumstances of his absence, and unless it is a proved to the satisfaction of such court that he was taken prisoner through his own wilful neglect of duty, or that he had served with or under, or aided, the enemy, or that he had not, as soon as possible, returned to the service, he may be recommended by the court to receive

Enquiry on absence of

person sub

Articles.

Persons
abecut as
presoners of
War

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either the whole or any portion of the arrears due to him, and to reckon his service

¹ Such recommendation, duly confirmed by the Commander in Chief in India, or by the general officer of the Command, or the officer com manding any force not attached to a Command to which he belongs, or by any general officer under whose command the person is serving, shall entitle him to receive such arrears and reckon service accordingly

TITLE IV

POWERS OF OFFICERS INDEPENDENTLY OF TREAL

2Article 164 -The Commander in Chief in India, the general offi Reduct on to cer of the Command, the officer commanding any force not attached to a or ranks. Command and the officer commanding any district or division or bri gade shall respectively have power to reduce to a lower grade or to the ranks any non commissioned officer under his command

lower grade

Article 165 -The Commander in Chief in India shall, under the M nor authority of the Governor General in Council prescribe the minor pun ishments to which persons subject to these Articles shall for light offences be liable without the intervention of a court martial and shall specify the officer or officers by whom and the extent to which such minor punishments may be awarded

pun shments

³Unless otherwise specially provided by the said Commander in Chief no Native Officer medical subordinate or warrant officer shall be liable to any such minor punishment

Good conduct pay shall not necessarily be forfeited on the infliction of a minor punishment but forfeiture thereof may be awarded as a substantive punishment by order of the commanding officer, as may from time to time be prescribed in the General Orders of the Commander in Chief in India

Forfesture of good conduct pay may be awarded in addition to any other minor punishment

Article 166 -For any offence in breach of good order, the com Offences of manding officer of any regiment, corps or detachment, whether Euro pean or Native in camp or at any frontier post at which troops are stationed and to which this article may be specially extended by the

¹ This paragraph was substituted for the original paragraph by Act XII of 1894 a 64. ¹ This art cle was substituted for the original art cle 164 by Act XII of 1894 a 65. ¹ These three concluding paragraphs were substituted for the original paragraphs by Act XII of 1894, a 66.

(Part II - The Articles of War Title IV - Powers of Officers independently of trial)

Governor General of India in Council, * * * * * * 1 may sen tence any Native follower of such regiment, corps or detachment, if above the degree of a menial servant, to pay a fine not exceeding fifty rupees or, in default of payment, or in lieu thereof, to imprisonment for any period not exceeding thirty days, or, if the Native follower be not above the degree of a menial servant, to imprisonment not exceeding seven days or to corporal punishment not exceeding twelve strokes of a rattan

Imprisonment awarded under this article may be carried out in a military guard, or in a jail, as ordered by the said commanding officer, and the officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant, under the hand of the said commanding officer, detain the offender according to the exigency of the warrant, or until he is discharged by due course of law

Complaints against officers Article 167 —Any person subject to these Articles who deems himself wronged by any superior or other officer, may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving, and may, if attached to a troop or company, complain to the officer commanding the same

When the officer complained against is the officer to whom any other complaint should under this article, be preferred, the aggrieved person shall complain to such officer's next superior officer

No such complaint shall be made to any officer other than those indicated in the former part of this article

Every officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority

Every such complaint shall be preferred through such channels as may be from time to time prescribed by proper authority, and any person preferring a firviolous or groundless complaint shall be liable to trial by any court martial competent to try him, and to such punish ment, other than dismissal, corporal punishment, or imprisonment with hard labour, as the court is empowered by these Articles to award

Provost marshals. Article 168—For the prompt and instant repression of irregularities and offences committed in the field or on the line of march, provostmarshals shall be appointed by 2[the Commander in Chief in India or the general officer of the Command] or the officer commanding the forces in the field, and the powers and duties of such provost marshals shall

¹ The words the Governor of Fort St. George in Council the Governor of Bombay in Council 7 any other Local Government were repealed by Act XII of 1894 s 67

² These words were substituted for the words the Commander in Chief of the Presidence by Act XII of 1894 s 68

(Part II - The Articles of War Title II - Powers of Officers and ependently of treal Title T -Non- Military Offices)

be regulated according to the established custom of war and the rules of the service

1rticle 169 -- The duties of a provost marshal so appointed are to Their duties take charge of prisoners confined for offences of a general description. to preserve good order and discipline, and to prevent breaches of the same by persons belonging or attached to the Army

The provost marshal may punish, corporally, then and there, any person amenable to these Articles below the rank of Inon-commissioned officer] who in his view, or in the view of any of his assistants, commits any breach of good order and military discipline

Provided that such punishment shall be limited to the necessity of the case, and shall accord with the orders which the provost-marshal may from time to time receive from the officer commanding the troops

Provided also that the orders of the said commanding officer shall in no case authorize such corporal punishment in excess of that awardable by sentence of a court maittal

If the actual commission of the offence is not witnessed by the provost marshal, or any of his assistants, but sufficient proof can be obtained of the offender's guilt, he shall report the case to the commander of the troops, who shall deal with the case as he may deem most conducive to the maintenance of good order and military discipline

TITLE V

NON MILITARY OFFENCES

Offences 2 [of which any person is accused] within jurisdiction of Criminal Court

Article 170 -Any person subject to these Articles, who, at any Offences of place in British India within the jurisdiction of any court of criminal which any justice established by Her Majesty, or by the Government of India, or accused by the Local Government, is accused of any offence against the Indian within Penal Code, and not included in the foregoing Articles, shall be deliver- of criminal ed over to the nearest magistrate to be proceeded against according to court

• 70

These words were substituted for the words 'warrant officer by Act XII of 1894, Pepealing and

(Part II - The Articles of II as Title I - Non-Mulitary Offinces)

Civil Offences

y tion spect es

Article 171 -Thery person subject to these Articles who at any place beyond British India commits any civil offence shall be deemed to be guilty of an offence against military law, and if charged therewith under this article shall, subject to the provisions of these Articles, be liable to be tried for the same by court martial at any place, whether within or beyond British India, and on conviction to be punished as follows, that is to say --

- (a) if the offence is one which would be punishable under the law of British India with death or with transportation, or with imprisonment for a term exceeding three years. he shall be liable to suffer any punishment assigned for the offence by the law of British India and
- (b) in other cases, he shall be liable to suffer any punishment assigned for the offence by the law of British India or such punishment as might be awaided to him in pursuance of these Articles in respect of an act to the prejudice of

good order and military discipline

xtension of rticle 171 to ertain civil ffences

Certain offences when triable by military law

Article 172 - The Governor General in Council may, by notifica tion, extend the last foregoing article to civil offences or any class of those offences committed by a person subject to these Articles when on active service in British India, and may cancel any such notification,

2 Article 173 -Every person subject to these Articles who, whether within or beyond British India, commits or attempts to commit or abets the commission of any of the following offences against any person subject to military law, that is to say, murder, culpable homicide or any offence punishable under any of the sections 323 to 335 (both inclusive) or section 506 of the Indian Penal Code.2 shall be deemed to XLV be guilty of an offence against military law, and if charged under this article with any such offence shall, subject to the provisions of these Articles, be liable to be tried by court martial at any place whether within or without British India, and on conviction shall be liable to suffer any punishment assigned for the offence by the said Code

Junsdict on over certain offences

Article 174 -- When under any of the foregoing Articles a criminal court and a court martial have each jurisdiction in respect of an offence. it shall be in the discretion of the prescribed military authority to decide before which court the proceedings shall be instituted, and, if that authority decides that they shall be instituted before a court martial, to direct that the accused person shall be detained in military custody

This heading and articles 171 to 175 here printed were substituted for the original articles I71 to 175 by Act \ II of 1894, s 71 and General Acts, VO I

(Part II - Tle delicles of War Title V - Von Military Offences Tatle TI -Property of Deceased Pusons a / Deserters)

Article 175 -(1) When a criminal court having jurisdiction is of Power of opinion that proceedings ought to be instituted before itself in respect of any alleged offence it may, by written notice require the convening authority or the prescribed military authority at his option either to dedeliver over the oftender to the nearest magistrate to be proceeded against according to law or to postpone proceedings pending a reference to the Governor General in Council

au re deli very of offen-

(2) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Governor General in Council whose order upon such reference shall be final

2 TITLE VI

PROPERTY OF DECEASED PERSONS AND DESCRIPTERS

2 Article 176 -The following rules are enacted respecting the dis posal of the property of every person who belongs to a class subject to these Articles who dies is killed in the field or deserts -

Property of deceased nersons de serters and lunat es

- (1) The commanding officer shall secure all the moveable property that is on the spot and cause an inventor, thereof to be made and draw any pay and allowances due to the deceased or deserter
- (2) In the case of a deceased person who has left in a Government Sayings Banl (including any Post Office Sayings Banl however named) a deposit not exceeding one thousand rupees the commanding officer may, if he thinks fit require the Secretary or other proper officer of the banl to pay the deposit to him forthwith notwithstanding anything it any departmental rules and after the payment thereof in accordance with such requisition no person shall have any right in respect of the denosit except as hereinafter provided
- (3) In the case of a deceased person whose representative is on the spot and has given security for the payment of the regimental debts (if any) of the deceased the commanding officer shall deliver over the property and the amount of the deposit (if any) received under clause (2) of this article to that representative
- (4) In the case of a deceased person whose estate is not dealt with under clause (3) of this article, and in the case of any deserter, the

Nee footnote on preceding page This Title and the art cles 176 to 179 here printed were substituted for the original articles 176 to 179 by Let AlI of 1894 s 72

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(Part II - I'le Articles of War Title VI - Property of Deceased Persons
and Deserters Part III - Miscellaneous)

commanding officer shall cause the property to be sold by public auction, and shall pay the regimental debts and other debts in camp or quarters (if any), and in the case of a deceased person the expenses of his funeral ceremonies, from the proceeds of the sale and the amount of the deposit (if any) received under clause (2) of this article

(5) The surplus, if any, shall in the case of a deceased person be paid to his representative, if any, or in the event of no claim to such surplus being established within twelve months after the death, then the same shall be remitted to the prescribed officer

(6) In the case of the sale of the effects of a deserter the amount remaining in the hands of the commanding officer shall be forthwith

remitted to the prescribed officer

'Article 177 — Property deliverable and money payable to the representative of a deceased person under the last foregoing article may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed officer thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title, and such delivery or payment shall be a full discharge to those ordering or making the same and to the Secretary of State for India in Council from all further liability in respect of the property or money, but nothing in this article shall affect the rights of any executor or administrator or other representative, or of any creditor, of a deceased person against any person to whom such delivery or payment has been made

Article 178 —A person shall be deemed to have deserted within the meaning of article 176 who has been convicted of desertion, or who has been illegally absent from duty for a period of sixty days and has not

subsequently surrendered or been apprehended

Article 179 —The provisions of the last mentioned article shall, so far as they can be made applicable, apply in the case of a person subject to these Articles becoming insane

*PART III

MISCELLANDOUS

Article 180 -When any person subject to these Articles has been

Disposal of certain pro perty without production of probate, etc

Meaning of desertion in article 176

Application of article 176 to lunatics

1 0..

(Part III - Viscellaneous)

acquitted or convicted of an offence by a court-martial or by a criminal court, or has been summarily dealt with for an offence under article 165 or 166, he shall not be hable to be again tried for the same offence by a court-martial or dealt with summarily in respect of it under either of the said articles

'Article ISI -(I) No person subject to these Articles shall, so long Exemption as he belongs to Her Majesty's Indian Forces, be liable to be arrested for debt. for debt under any process issued by, or by the authority of, any civil or revenue court or revenue-officer

- (2) The judge of any such court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this article, and may by warrant under his hand discharge the person, and award reasonable costs to the complanant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process
- (3) For the recovery of such costs no fee whatever shall be payable to the court by the complainant

Article 182 -Neither the arms, clothes, equipment, accountements Property or necessaries of any person subject to these Articles, nor any animal erapped used by him for the discharge of his duty, shall be seized, nor shall more the pay and allowances of any such person or any part thereof be attached by direction of any civil or revenue court or any revenueofficer, in catisfaction of any decree or order enforceable against

Article 183 —Every person belonging to the Indian Reserve Forces Application shall, when called out for or engaged upon or returning from training shall, when called out for or engaged upon or returning from training shall, when called out for or engager upon and the privilege terms or service, as an officer or soldier, be entitled to all the privilege terms at the control of the privilege terms at the control of t accorded by the two last foregoing articles to a person subject to there Articles

- Article 184 -(1) On the presentation to any court by or on believe recorned of any officer or soldier subject to these Articles of a certificate, for I are to the control of proper military authority, of leave of absence having been granted a form or applied for by him for the purpose of prosecuting or crash in the purpose of prosecuting or c any suit or other proceeding in such court, the court shall, (1 - 16) and suit or other proceeding in such court, the court shall, (1 - 16) and any suit or other proceeding in such court, the court shall, (1 - 16) and (1 for the hearing and final disposal of such suit or other present. within the period of the leave so granted or applied for.
- (2) The certificate from the proper military authors, have received the first and last day of the leave or intended leave, 25 to 1 mg

(Part III Miscellaneous)

description of the case with respect to which the leave was granted or applied for

- (3) No fee whatever shall be payable to the court an respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such officer or soldier for priority for the hearing of his case
- (4) Where the court is unable to arrange for the hearing and final disposal of the su.* or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such officer or soldier on his application without any payment what ever by him in respect either of the application for such copy or of the copy, itself
- (5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to the nearest officer communding a corps, whose decision shall be final

¹ Article 155—(1) Whenever any person subject to these Articles deserts, the commanding officer of the corps, department or detachment to which he belongs shall give written information of the desertion to such civil political or police authorities as in his opinion, may be able to afford assistance towards the capture of the deserter and such authorities shall thereupon take steps for the apprehension of the said deserter in hile manner as if he were a person for whose capture a warrant had been issued by a magnistrate, and shall deliver the deserter, when apprehended, to military custody

(2) Such authorities shall also, by such means as appear to them best adapted for the purpose, prevent persons reasonably behaved to be subject to these Articles from travelling through the areas subject to their jurisdiction, unless on duty or furnished with a certificate of leave or discharge

(3) Any police officer may arrest, without warrant, any person reasonably believed to be subject to these Articles and to be travelling without authority and shall bring him without delay before the nearest military commanding officer when no magistate is readily accessible to be dealt with according to law

Article 186 —Whenever any person subject to these Articles, who is accused of any military offence is within the jurisdiction of any civil, political or police officer, such officer shall aid in the apprehension and dilivery to military custody of such person upon receipt of a written application to that effect signed by his communding officer

Apprehens nof multiry

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(Part III - Miscellaneous)

¹ Article 187 —In any proceeding under these Articles, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the civil or military service of the Government shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown

Presumption as to signa tures

1 Article 188 —(1) The Governor General in Council may direct that for the purposes of these Articles—

Portions of the forces under an Army Command.

- (a) any portion of Her Majesty's Indian Forces belonging to a Command shall, when serving beyond the ordinary limits of the Command, continue subject to the authority of the general officer of the Command, or
- (b) any portion of those forces not belonging to a Command shall be attached to a Command, and shall be subject to the authority of the general officer of the Command
- (2) Except as may be directed under clause (I) of this article, any portion of the said forces shall, when serving in a Command, be for the purposes of these Articles subject to the authority of the general officer of that Command
- ¹ Article 189 Nothing in these Articles shall be deemed to affect the authority conferred on the Communder in Chief in India by any Act of Parliament or by Royal Warrant or Commission
- Article 190 —(I) The Governor General in Council may, by notification, male rules consistent with these Articles to regulate the procedure of courts martial and officers, military, civil or political, having any jurisdiction or authority under these Articles, and for the purpose of carrying these Articles into execution, so far as reliets to the investigation, trial and punishment of officeres triable under them

(2) Rules under this article may provide among other matters for the following —

(a) the assembly and procedure of courts of enquiry,

(b) the convening and constituting of courts martial.

(c) the adjournment, dissolution and sittings of courts martial,

(d) the procedure to be observed in trials by courts martial, ³(c) the confirmation and revision of the findings and sentences

of courts martial,

(f) the carrying into effect sentences of courts martial,

Saving of

authority of Command-

er in Chief

make rules.

39 Pt I, p 619, us 658 prescribed military India, 1697, Pt. I.

1 Ccc A + 3 TT # 1901

(Part III .- Miscellaneous)

Volunteers.

[1869 : Act XX.

- (g) the forms of orders to be made under the provisions of these
 Articles relating to courts martial, transportation or imprisonment
- (3) The Governor General in Council may by any such rule confer on any court martial or officer any power (other than a power to try an accused person or pass a sentence) conferred on a court of original jurisdiction by the Code of Criminal Procedure, 1882 ¹

²Article 191—(1) The Governor General in Council may, by notification, apply all or any of the provisions of these Articles to any force raised and maintained in India under the authority of the Governor General in Council, and may cancel or modify any such notification

(2) While any of the provisions of these Articles apply to any such force, the Governor General in Council may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of those provisions shall be exercised or performed in respect to that force.

APPENDIX

[The Appendix, which set out certain sections of the Indian Penal Code, has been rendered obsolete by the substitution of Part I (e) and of article 71 for the original Part I (e) and article 71 respectively by sections 4 and 22 of Act XII of 1894 It has accordingly been omitted]

THE SECOND APPENDIX 4

[Rep Indian Articles of War Amendment Act, 1904]

THE INDIAN VOLUNTEERS ACT, 1869

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ACI No XX of 1869 1

[10th September 1869]

An Act to provide for the good order and discipline of Volun teer Corps, and to invest them with certain powers ²

Preamble

Whereas many loyal subjects of Her Majesty have volunteered their services for the protection of life and property and the preservation of the peace and have with the sanction of Government associated and enrolled themselves as Military Corps under the command of officers appointed for that purpose and it is expedient to provide for the good order and discipline of such corps, and to invest their members with certain powers, It is hereby enacted as follows —

Preliminary

Short title.

1 This Act may be called the Indian Volunteers' Act, 1869

(Preliminary Formation and Dissolution of Volunteer Corps Application of Army Act)

2 This Act shall extend to the whole of British India and (so far as Extent of regards British subjects) to the dominions of Native Princes and States in alliance with Her Majesty

3. [Repeal of Act ANIII of 1857] Rep by the Repealing Act, 1870 (AIV of 1870)

Definitions

14. (1) "Magistrate means, within the limits of the presidency towns the Chief Presidency Magistrate, and without those limits a Magistrate of the first class who is a Justice of the Peace

(2) volunteers shall be deemed to be on "actual duty"-

- (a) when being truned or exercised either alone or with any portion of the regular forces, or
 - (b) when attached to or otherwise acting as part of or with any regular forces, or
 - (c) when serving in aid of the civil power, and
- (3) civil district means a district as defined in the Code of Civil Procedure 2

Formation and Dissolution of Volunteer Corps

5 Corps of Volunteers may, with the sanction of the Governor General of India in Council or of the Local Government, be formed in any part of British India or of the said dominions 3

Formation of corp3

6 A certificate of enrolment in such corps signed by the Command ing Officer thereof, shall be prima facic evidence of such enrolment

Certificate of Commanding Officer to be evidence of

7. The Governor General of India in Council or the Local Govern ment may disband any corps formed or enrolled under the provisions of this Act or of Act No XXIII of 1857.4 or remove from such corps any member therof

enrolment Power to disband corps or remove mem bers.

Application of Army Act

8 Every member of a corps of volunteers shall, for all military Volunteers offences of which he shall be guilty whilst on actual duty or actual army Act,

subjected to

Act Sped e of

1909

Act XXIII of 1857 is repealed by a 3 of this Act This section was substituted for the original section by the Indian Volunteers Act Amendment Act 1896 (\ of 1896) s 3

(Courts Martial Withdrawal from Corps)

so for as at applies to officers military service, be subject to the Army Act, so far as the same is 44 applicable to officers and consistent with the provisions of this Act

Courts Martial

Appointment of and sen tences by, General Courts Mar tial 9 General Courts Martial shall be convened and appointed by the Commanding Officer of the corps, with the sanction of the Local Government, for the trial of military offences of which any member of such corps shall be guilty whilst on actual duty

No sentence of such Court Martial shall be put into execution until after a report of the whole proceedings shall have been made to, and the sentence shall have been confirmed by, the Local Government

The Local Government may commute any such sentence for a less

General Courts Martial shall consist of not less than nine to be composed or not, shall be competent to sit and act as a member of such Court

Regimental Courts Mar tial Martial

11 Regimental Courts Martial may be convened by the Command ing Officer of the corps, and shall consist of not less than three members of the corps

Procedure of Courts Martial held under this Act 12 The proceedings of Courts Martial convened under this Act shall be conducted according to the laws and customs applicable to Courts Martial held under the said [Army Act], except so far as the same are moonsistent with the provisions of this Act

Withdrawal from Corps

Power to quit the corps. 13 Any person enrolled as a member of a corps of Volunteers, whether he shall have been elected or commissioned as an officer in such corps or not may except whilst on actual duty "for actual military service], quit the corps upon giving to the Officer Commanding the corps seven days previous notice in writing of his intention so to do, or without such notice if the Commanding Officer of the corps shall consider it reasonable and allow him so to do

Comm 35 ons to officers to cease on retirement or dismissal Delivery of arms belong ing to Gov 14 Every commission to any member of a corps of Volunteers appointing him an officer in such corps shall cease upon his retirement or dismissal from the corps

15 Every member of a corps of Volunteers who shall have received any arms, ammunition, accountements or uniform belonging to Govern

¹ See now the Army Act (44 & 45 Vict c 58) as amended by the Army Annual Act

s Art cles of War by the

(Local Linits of Service)

ment, or which shall have been furnished from the public stores or at ernment by the public expense, shall upon his quitting such corps.

members quitting the or upon his dismissal therefrom, corps

or whenever he shall be required so to do by the Commanding Officer of the corps.

or whenever the corps shall be disbanded, deliver up to the Commanding Officer, or such person as he shall

appoint to receive the same all such arms, ammunition, accountements and uniform in good order and condition, reasonable wear thereof only excepted.

and in default thereof he shall pay such sum of money as shall be adjudged by a Regimental Court Martial to be assembled for that purpose by the Commanding Officer of the corps A copy of such adjudication, signed by the President of the Court Martial, shall be sent to the principal Court of original civil jurisdiction in the district in which the adjudication shall have been given, and shall be executed by such Court as if it were a decree for money under the Code of Civil Procedure 1

Local Lamits of Service

2 16 No member of a corps or battalion of volunteers, other than naval Local I mits volunteers shall be bound, without his consent to serve or proceed on of service duty beyond the limits of the civil district in which he was enrolled or where a corps or battalion consists of volunteers enrolled in more civil districts than one, beyond the limits of the territory comprised in those districts and

no member of a corps of naval volunteers shall be bound, without his consent, to serve or proceed on duty beyond the limits of the port to which the corps belongs, such port being construed to include the city or town after which the corps is named, and its suburbs, and the navigable rivers, channels and fairways leading thereto

This reference should now be aken as made to Act V of 1908 [General Acts Vol VII] * This section was substituted for the original section by the Indian Volunteers Act

Amendment Act 1896 (\times of 1896) s 6 but its provisions do not apply to a volunteer enrolled before the commencement of Act \times of 1896 unless he consents in writing to be bound thereby- see s 9 of that Act

The original section is as follo vs -

Local Limits of Service

¹⁶ No member of a corps of volunteers shall be bound without his consent to serve or proceed on duty beyond the limits within which No member bound to serve bey nd certain di tance No member bound to serve by nd certain distance which the corps to which he belongs shall have wo luntarily engaged to serve or proceed on duty in accordance with the terms upon which the corps to which he belongs shall have been constituted and in case no such limits shall have been fixed he shall not be liable to every or proceed. on duty beyond 4 miles from the place at which he was enrolled

(Rules Ponalties)

Provided that the Local Government or the Commissioner of the Division, or otler authority to whom power in this behalf may be delegated by the Local Government, may exempt from service any particular corps or portion of a corps or any individual member or members of a corps by name. Such exemption may be whole or partial in respect either of time or of area, or of both, as the empowered authority may see fit to prescribed.

Rules

Commar ding Officer to frame rules which shall be binding on the members 17 The Commanding Officer of every corps of Volunteers may frame such general rules as he may think fit for regulating the times at which and the manner in which the duties of the corps and of the several members or detachments thereof shall be discharged

Such rules, when sanctioned by the Local Government, shall be binding on the corps and on the several members thereof

Penalties

Not attend ing actual duty other than drill or parade 18 If any member of a corps of Volunteers, being warned for actual duty other than drill or parade shall without reasonable excuse neglect to attend such duty, he shall be liable, upon conviction by a General Court Martial, to a fine not exceeding one hundred rupees, or to simple dismissal from the corps, or to dismissal from the corps as unworthy to belong to it.

Not attend ing drill or parade 19 If any member of such corps shill, without reasonable excuse neglect to attend drill or parade at such times as may be appointed for that nursose.

Other m nor m litary offence or shall be guilty of any neglect of duty or other military offence which in the judgment of the Commanding Officer of the corps will be sufficiently punished by a small fine

Downship

he shall be liable to pay such fine, not exceeding fifty rupees, as a Regimental Court Martial shall impose

Punishment for non pay men* of fine 20 If any member of such corps shall neglect or refuse to pay any fine to which he shall be sentenced by any Court Martal, within such time as shall be fixed by the Commanding Officer of the corps, he may be dismissed by the said Commanding Officer from the said corps, and every such dismissal shall be recorded and reported to the Local Government

Penalty for assaulting or res sting Volunteers in disclarge of their duty 21 Whoever assaults or resists, or abets within the meaning of the Indian Penal Code, any person in assaulting or resisting any member XLV of such corps in the discharge of his duty, shall be punishable, on conviction before a Magistrate with fine not exceeding two hundred

(Penalties. Powers of Volunteers)

rupees, or with imprisonment for any term not exceeding six months, or with both

22. In default of payment of any fine imposed by a Court Martial Recovery of under this Act, a copy of the sentence of the Court Martial imposing the fine, signed by the President of such Court, may be sent to a Magistrate in the presidency-town or the district in which the fine shall have been imposed, who shall thereupon cause the fine to be recovered as if he had himself imposed it

Fines imposed under section 21 may be recovered [in the manner provided by the law for the time being in force for the recovery of fines imposed by Cirminal Courts].

Powers of Volunteers.

23. Any member of a corps of volunteers, whenever he may be in Power to discharge of his duty as a member of the corps, and wheresoever he may then be, may disarm any person not being in Her Majesty's Military or Naval service or a police officer, found between sunset and suprise in any public street, thoroughfare or other public place, armed with a sword, spear, gun or other warlike instrument, without a pass or license for that purpose from the Commissioner of Police or other officer authorized by Government to grant the same,

and may also disarm any person found armed at any time contrary to law or to any order of Government in any public street, thoroughfare or other public place.

and may also apprehend and deliver over to a police-officer any person so found aimed in order that he may be dealt with according to law;

and the weapon so seized shall be forfeited to Government or otherwase dealt with according to law, or to the orders of Government

24. Any member of such corps, whenever he is on duty, may prevent any disturbance of the public peace, and disperse any persons whom he may find assembled together to the number of five or more without reasonable cause between sunset and sunrise in any public street, thoroughfare or other public place in which such member of the said corps may be in the discharge of his duty,

and may also apprehend any person reasonably suspected of having committed, or being about to commit, any offence against the State, or

apprehend and deliver to police Forfesture of weapons serzed Power to prevent dis-turbances of the public to disperse unlawful assemblies .

to apprehend. certain suspected persons.

¹ These words were substituted for the original words by the Repealing and Amending Act, 1891 (XII of 1891) The original words ran-.

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ist place speech destributed \$1.

Unclaimed Deposits

(3) After a corps or portion of a corps of volunteers has been called out for actual military service, the corps or portion of a corps shall be deemed to be released from actual military service only after a notification in the Gazette of India declaring the occasion to have passed, and not sooner or otherwise

Provided that the Governor General in Council may at any time discharge any such corps or portion of a corps from actual military service

- (4) Before a corps or portion of a corps of volunteers is released from actual military service, provision shall be made by the Government for the return of the volunteers present therewith to their homes
 - 128. (1) The Governor General in Council may make rules for "-
 - (a) the making of payments to, and the provision of transport 3 and supplies for, volunteers called out on actual military to volunteers. service, and
 - (b) the grant of pay, pensions, gratuities, allowances and rewards to them
- (2) The Governor General in Council may apply such rules or any part of them to any volunteers who may have been called out by any Magistrate or other authority in aid of the civil power

and may in such case direct, any enactment notwithstanding, by whom the cost of the payments to be made and supplies to be provided under the rules shall be borne

29. Where a corps consists of volunteers enrolled in territories subject to more Local Governments than one, the Governor General in Council may, by notification in the Gazette of India, declare what Local Government shall for all or any of the purposes of this Act be deemed to be the Local Government with respect to the corps

ernment to act with respect to corislaving members enrolled in more provinces than

Appointmer t

of Local Gov

Power to

make rules as to allowances

ACT No V of 1870 4

[4th Tebruary 1870]

An Act to enable the High Courts at the Presidency towns to deal with costs of petitions for certain moneys transferred to Government

WHERE'S the High Courts of Judicature at Fort William, Madras Preamber

ent or duty as such on rail General icts Vol IV ne Indian Short Titles Act.

f India 1870 Pt V p 5, 06, sbid, 1870, Supplement.

See fourth footnote on preceding page For rules made in Burma under the powers conferred by this section, see Burma Laws List, Ed 1897, p 24

Power to

are to be

whom costs

[1870 : Act V. [1870 : Act VII.

Court fees

And whereas it is expedient to confer such power upon the said High Courts.

It is hereby enacted as follows --

1 Whenever any of the said Courts shall make an order on any such petition, the Court may direct by whom the whole or any part of the costs of each party are to be paid

THE COURT-FEFS ACT, 1870

CONTLNTS

CHAPTER I

SECTIONS

1 Short title

Extent of Act

Commencement of Act

2 "Chief controlling Revenue authority" defined

CHAPTER II

FEES IN THE HIGH COURTS AND IN THE COURTS OF SMALL CAUSES AT

- 3 Levy of fees in High Courts on their original sides
- Levy of fees in Presidency Small Cause Courts
- 4 Tees on documents filed, etc., in High Courts in their extra ordinary jurisdiction
 - in their appellate jurisdiction
 - as Courts of reference and revision
- 5 Procedure in case of difference as to necessity or amount of fee

ements and the proceeds
Bengal were repealed

Act 1867 are omitted a Act so far na it relates General a Act 1874 (II

of by

to of 1874) a 2, see infra

и 2

CHAPTER III

FEES IN OTHER COURTS AND IN PUBLIC OFFICES

Sections

- 6 Fees on documents filed, etc., in Mufassal Courts or in public
- 7 Computation of fees payable in certain suits
 - 1 for money,
 - ii for maintenance and annuities
 - III for other moveable property having a market value,
 - iv (a) for moveable property of no market value
 - (b) to enforce a right to share in joint family property,
 - (c) for a declaratory decree and consequential relief,
 - (d) for an injunction,
 - (e) for ensements.
 - (f) for accounts,
 - v for possession of land houses and gardens, provise as to Bombay Presidency for houses and gardens
 - vi to enforce a right of pre emption,
 - vii for interest of assignee of land revenue.
 - viii to set aside an attachment
 - or to rede m
 - to foreclose
 - x for specific purformance
 - xi between landlord and tenant
 - 8 Fee on memorandum of appeal against order relating to compensation
 - 9 Power to ascertain nett profits or market value
- 10 Procedure where nett profits or market value wrongly estimated
- 11 Procedure in suits for mesne profits or account wh enamount decreed exceeds amount claimed
- 12 Decision of questions as to valuation
- 13 Refund of fee paid on memorandum of appeal
- 14 Refund of fee on application for review of judgment
- 15 Refund where Court reverses or modifies its former decision on ground of mistale
- 16 [Requaled]
 17 Multifactions suits
- 18 Written examinations of complainants
- 19 Exemption of certain documents

CHAPTER IIIA

Probates, Letters of Administration and Certificates of Administration

SECTIONS

- 19A Relief where too high a court fee has been paid
- 19B Relief where debts due from a deceased person have been paid out of his estate
- 19C Relief in case of several grants
- 19D Probates declared valid as to trust property though not covered by court fee
- 19E Provision for case where too low a court fee has been paid on probates etc
- 19F Administrator to give proper security before letters stamped under section 19F.
- 19G Executors, etc., not paying full court fee on probates, etc.,
 within six months after discovery of underpayment
- 19H Notice of applications for probate or letters of administra tion to be given to Revenue authorities, and procedure thereon
- 19I Payment of court fees in respect of probates and letters of administration
- 19J Recovery of penalties etc
- 19K Sections 6 and 28 not to apply to probates or letters of administration

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PROCESS FEES

- 20 Rules as to costs of processes Confirmation and publication of rules
- 21 Tables of process fees
- 22 Number of peons in District and Subordinate Courts Number of peons in Mufassal Small Cause Courts
- 23 Number of peons in Revenue Courts
- 24 [Repealed]

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OF THE MODE OF LEVILING FEES

- 25 Collection of fees by stamps
- 26 Stamps to be impressed or adhesive

SECTIONS.

- 27 Rules for supply, number, renewal and keeping accounts of stamps
- 28 Stamping documents inidvertently received
- 29 Amended document
- 30 Cancellation of stamp

CHAPTER VI

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- 31 Repayment of fees paid on applications to Criminal Courts
- 32 [Repealed]
- 33 Admission in criminal cases of documents for which proper fee has not been paid
- 34 Sale of stamps
- 35 Power to reduce or remit fees
- 36 Saving of fees to certain officers of High Courts

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- II TIXED FEES
- III FORM OF VALUATION

ANNEXURE A -VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY
OF DECLASED

ANNEXURE A -- SCHEDULE OF DEBTS, ETC

APPENDIX

Short title Extent of

Commence ment of Act

Act

(Chapter I -Preliminary)

THE COURT-FEES ACT, 1870 1

[11th March 1870]

CHAPTER I

PRELIMINARY

 This Act may Le called the Court-fees Act. 1870 It extends to the whole of British India:

And it shall come into force on the first day of April, 1870

For the Statement of Objects and Reasons see Gazette of India, 1869 Pt V, p 57, to proceedings in Council, set total, 1869, Supplement, pp 1179 and 1522, total, 1870, Supplement pp 52, 378, 421, 427 and 434

For rules under the Act by the High Court Madras, Appellate Side, see Fort St. George Gazette, Supplement, dated 20th December 1905, p 1, and for Ovel Rules of Practice by the same Court, under this Act the Call Proceedings of the Court Madras, Appellate Side, see Fort St. George Gazette, Supplement, dated 20th December 1905, p 1, and for Ovel Rules of Practice by the same Court, under this Act the Call Proceedings of the Call

that Province, except the Small

by the Burma Laws Act. 1898

Laws Regulation (I of 1890),

s 3, Bal Code in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III of 1872) as mended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899) Ben Code,

in the sub division of Angul, by the Angul District Regulation, 1894 (I of 1894), s 3 Ben Code further been declared h not first on ador a 2 () of th C h 2 1 2 D to de

1899, Pt. I, p. 44, the District of Lohardaga then included the present District I, p. 503, 1881, Pt. I, p. 503, I, p. 503, Gazette of India, 1881, Pt. I,

I, p 505

the Scheduled Districts in Ganjam and Vizagapatam, see Gazette of India, 1898,

Pt I, p 869, the ' It has the Distric and 5A of trict, the

Act, 18

to the Kolhan in , and under as 5 ie Garo Hills Dis the North Cachar rict and

loes not in such of the p 164, p 913. 913, (Chapter I - Preliminary Chapter II - Fees in the High fourts and in the Courts of Small Causes at the Presidency-towns)

12 In this Act, unless there is anything repugnant in the subject. Chief or context, "Chief Controlling Revenue-authority" means-

controlling Revenue authority '

- (a) in the Presidency of Fort St George and the territories re spectively under the administration of the Lieutenant Governors of Bengal and the 2North-Western Prov nees and the Chief Commissioner 2 of Oudh - the Board of Revenue.
- (b) in the Presidency of Bombay outside Sindh and the limits of the town of Bombay - a Revenue Commissioner,
- (c) in Sindh the Commissioner,
- (d) in the Punjabs and Buima, including Upper Burma—the Financial Commissioner, and
- (e) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette.4 appoint in this behalf

CHAPTER II

FEES IN THE HIGH COURTS AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY TOWNS

3 The fees payable for the time being to the clerl's and officers Levy of fees (other than the sheriffs and attorneys) of the High Courts established

The Art came into permanent operation in Aden on 1st April 1876 see Bombay Government Gazette 1876 Pt 1 p 986 It has been declared mappicable to proceedings before officers making a settlement and in certain other cases under the Snithal Parginas Settlement Regulat on (III of 1872) s. 8 as amended by the Santhal Parganas Justice and Laws Regulation 1899 (3 of 1899) Ben Code - JJ . T ros R sms by the Unior Birma Civil Courts Regula

urts Act 1884 Lower Burma

ct 1901 (\ of nactments was

Oudh and the of these Pro of India 1902 General 1cts

Vol. V
As to the N. W. F. Province ee the N. W. F. Province Law and Justice Regula tion, 1901, VII of 1901) a, 6 (1) (d) P and N. W. Code

rement Gazette 1902 Pt. p. 35,

rnment Gazette 1902 Pt I, p 35, Pt I p 389 and un parts of the district of Cachar, see (Chapter II - Fees in the High Courts and the Courts of Small Causes at the Presidency-louns)

Courts on their original side+

Levy of fees 10

Courts Fees on doc 1

Presidency Small Cause

ments filed.

Courts in ti cir extra

ordinser

etc . in High

by Letters Patent, by virtue of the power conferred by 1 Statute 24 & 25 of Victoria, Chapter 104, section 15.

or chargeable in each of such Courts under No 11 of the first, and Nos 7, 12, 14,2 * 20 and 21 of the second schedule to this Act annexed.

and the fees for the time being chargeable in the Courts of Small Causes at the 3Presidency-towns, and their several offices.

shall be collected in manner hereinafter appearing

4 No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in purisdiction . the exercise of its extraordinary original civil jurisdiction.

in their appellate incisdiction.

or in the exercise of its extraordinary original criminal jurisdiction. or in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said Court, or of a division Court,

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence,

as Courts of reference and revision

or in the exercise of its jurisdiction as a Court of reference or fevision.

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document

Procedure in case of difference as to A necessity or amount of fee.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing officer, whose decision thereon shall be final, excent when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose

See the Indian High Courts Act 1861 (24 & 25 Vict c 104), Coll Stat, Vol I

"The number "natteen "was repealed by the Repealing and Amending Act, 1891
(All of 1891) General Acts Vol IV

"See the Presidency Small Cause Courts Act, 1882 (XV of 1882), Ch X, General Acts, Vol III

(Chapter III - Fees in other Courts and in Public Offices)

decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first Judge of such Court

The Chief Justice shall declire who shall be taxing officer within the meaning of the first paragraph of this section

CHAPTER III

THES IN OTHER COURTS AND IN PUBLIC OFFICES

6 Except in the Courts hereinbefore mentioned, no document of Fees on docu any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Mufassal Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document

ments filed etc m Courts or in public offices

7. The amount of fee payable under this Act in the suits 1 next Computation hereinafter mentioned shall be computed as follows -

of fees pay able in certain suits for money .

1 In suits for money (including suits for damages or compensa tion, or arrears of maintenance of annuities, or of other sums payable periodically)-according to the amount claimed

11 In suits for maintenance and annuities or other sums payable for mainten periodically-according to the value of the subject matter annuities

of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year In suits for moveable property other than money, where the for moveable subject matter has a market value-according to such value

property having a market-

at the date of presenting the plaint iv In suits-

(a) for moveable property where the subject matter has no for moveable market value as for instance, in the case of documents no marketrelating to title

value . property of value,

- (b) to enforce the right to share in any property on the to enforce a ground that it is joint family property,
 - right to share ın joint fami ly property , for a declar atory decree and conse quential re-

lief .

(c) to obtain a declaratory decree or order, where consequen tial relief is prayed,

¹ For the amount of fee payable in certain suits and proceedings under the Agra Tenancy Act 1901 (U P Act II of 1901) see s 170 of that Act U P Code

(Chapter III - Fees in other Courts and in Public Offices)

for an In junction; for ease ments,

for accounts :

for posses sion of lands,

houses and

gardens,

- (d) to obtain an injunction,
- (e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and
- (f) for accounts-

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal

In all such suits the plaintiff shall state the amount at which he values the relief sought 1 . . .

v In suits for the possession of land, houses and gardens—ac cording to the value of the subject-matter, and such value shall be deemed to he—

where the subject-matter is land, and-

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government.

or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue.

and such revenue is permanently settled-

ten times the revenue so payable

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid.

and such revenue is settled, but not permanently-

five times the revenue so pavable

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint-

fifteen times such nett profits

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned—the market-value of the land

^{&#}x27;The words and the professions of the Code of Civil Procedure section thirty one, shall apply as if for the word 'claim the words' relief sought were substituted were repealed by the Repealing and Amending tet 1991 (VII of 1991)

(Chapter III - Pees in other Courts and in Public Offices)

Provided that, in the territories subject to the Governor of Bom Proviso as bay in Council the value of the land shall be deemed to be-

to Bo nbay Presidency 1

- (1) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government-a sum equal to five times the survey as sessment.
- (2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government-a sum equal to ten times the survey assessment, and
- (3) where the whole or any part of the annual survey assess ment is remitted-- sum computed under paragraph (1) or paragraph (2) of this proviso as the case may be, in addition to ten times the assessment, or the portion of assessment, so remitted

Explanation -The word "estate" as used in this paragraph, means any land subject to the payment of revenue, for which the pro prietor or farmer or raisat shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue

> (c) Where the subject matter is a house or gardenaccording to the market value of the house or garden

for houses and gardens :

- vi In suits to enforce a right of pre emption—according to the right of pre value (computed in accordance with paragraph v of this emption. section) of the land house or garden in respect of which the right is claimed
- vii In suits for the interest of an assignee of land revenue-fifteen for interest times his nett profits as such for the year next before the of land date of presenting the plaint

viii In suits to set aside an attachment of land or of an interest to set aside in land or revenue-according to the amount for which ment. the land or interest was attached

Provided that where such amount exceeds the value of the land or interest the amount of fee shall be computed as if the suit were for the possession of such land or interest

ix In suits against a mortgagee for the recovery of the property to redeem. mortgaged.

and in suits by a mortgagee to foreclose the mortgage,

to foreclose .

or, where the mortgage is made by conditional sale, to have the sale declared absolute-

according to the principal money expressed to be secured by the instrument of mortgage

(Chapter III - Fees in other Courts and in Public Offices)

for specific performance .

between landlord and

tenant.

- x In suits for specific performance-
 - (a) of a contract of sale-according to the amount of the consideration
 - (b) of contract of mortgage-according to the amount agreed to be secured
 - (c) of a contract of lease-according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term
 - (d) of an award-according to the amount or value of the property in dispute

xi In the following suits between landlord and tenant -

(a) for the delivery by a tenant of the counterpart of a lease. (b) to enhance the rent of a tenant having a right of occu

pancy. (c) for the delivery by a landlord of a lease,

(cc) for the recovery of immoveable property from a tenant, including a tenant holding over after the determination of a tenancy.

(d) to contest a notice of electment,

(e) to recover the occupancy of 2[immoveable property] from which a tenant has been illegally ejected by the landlord, and

(f) for abatement of rent-

according to the amount of the rent of the 2 [immoveable property] to which the suit refers, payable for the year next before the date of presenting the plaint

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the 2acquisition of land for public purposes shall be computed according to the difference between the amount

awarded and the amount claimed by the appellant

9. If the Court sees reason to think that the annual nett profits or the market value of any such land, house or garden as is mentioned in section 7, paragraphs 5 and 6, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court

I ee on me morandum of anneal against order relating to compensation

Power to ascertain nett profits or marketvalue.

This clause was inserted by the Court-fees (Amendment) Act 1905 (VI of 1905), 2 (f) Genl Acts, Vol. VI

These words were substituted for the word "land by s 2 (g) of the Courtfees (Amendment) Act 1905 (V; I of 1905) feen Acts Vol. VI

See now the Land Acquisition Act, 1294 (I of 1994), Genl Acts Vol. IV

(Chapter III - Tees in other Courts and in Public Offices)

10 : If in the result of any such investigation the Court finds that Procedure the nett profits or market value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market value or nett profits been rightly estimated

where nett profits or market-value nrongly estimated

In such case the suit shall be stayed until the additional tee is paid If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed

11 In suits for mesne profits or for immoveable property and mesne profits, or for an account if the profits or amount decreed are or is suits for in excess of the profits claimed or the amount at which the plaintiff valued the relief scught, the decree shall not be executed until the difference between the fee actually paid and the fee which would have dec eed ex been payable had the suit comprised the whole of the profits or amount chiraed so decreed shall have been paid to the proper officer

Procedure in me ne profits or account hen amount cec is amount

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree of the profits so ascertained exceed the profits claimed, the further execution of the decree shall be staved until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix the suit shall be dismissed

12 1 Every question relating to valuation for the purpose of deter mining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be is filed, and such decision shall be final as between the parties to the suit

Tellon of que tion as to valuation

11 But whenever any such suit comes before a Court of appeal, reference or revision of such Court considers that the said question has been wrongly decided to the detriment of the revenue at shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided.

and the provisions of section 10 paragraph is shall apply 13 If an appeal or plaint which has been rejected by the lower Fee pail on

Court on any of the grounds mentioned in the Code of Civil Procedure, nemorization

Th constr word

^{1891 (\}II of 1891) il Procedure shall be ere inserted after the were inserted after

the vord damages This reference should now be read as applying to Act V of 1908 Gen! Acts. Vol. VI

(Chapter III - Fies in other Courts and in Public Offices)

dum of ap

is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in 'section 351 of the same Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the . Collector the full amount of fee paid on the memorandum of appeal.

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

Refund of fee on ap plication for review of judgment 14. Where an 'application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before 's such day

Refund where Court reverses or modifies its former decision on ground of mistake 15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the '[application] as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No 1, clause (b) or clause (d)

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing

16. [Additional fee where respondent takes objection to unappealed part of decree] Rep Act V of 1908

Multifarious

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in

re, 1908 (Act

This reference should now be read as applying to the corresponding provision of tet V of 1908

As to refund of fees paid on applications to the Chief Court or the Court of the

As to refund of fees paid on applications to the Chief Court of the diction under 324), s 72 as

amending this Act), Gen! Acts, Vol. II

(Chapter III - Fees in other Courts and in Public Offices)

suits embracing separately each of such subjects would be liable under this Act

Nothing in the former part of this section shall be deemed to affect the power conferred by the 1 Code of Civil Procedure, section 9

18 When the first or only examination of a person who complains Written exof the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police officers may arrest planants. without a warant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the 2 Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment

19. Nothing contained in this Act shall render the following documents chargeable with any fee -

I'xemption of certain documents.

- 1 Power of-attorney to institute or defend a suit when executed by an officer, warrant officer, non commissioned officer or private of Her Majesty's army not in civil employ-
- 11 [Rep by the Repealing and Amending Act, 1891 (XII of 1891) 1
- 111 Written statements called for by the Court after the first hearing of a suit
 - IV [Rep by the Cantonments Act 1889 (\III of 1889)]
 - v Plaints in suits tried by Village Munsifs in the Presidency of Fort St George
 - vi Plaints and processes in suits before District Panchayats in the same Presidency
- vii Plaints in suits before Collectors under 'Madras Regulation XII of 1816
- viii Probate of a will letters of administration 5 and save as regards debts and securities a certificate under Bombay Regulation VIII of 1827] where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees

ct | lof | I de of Criminal Procedure

Code

(Act

These words were substituted for the original vords and figures and certificate mentioned in the First Sche lule to this Act minered No 12 by the Succession Certificate Act 1889 (VII of 1889) s 13 (*) Genl Acts, Vol. IV

(Chapter III - Fees in other Courts and in Public Offices)

- 1x Application or petition to a Collector or other officer making a settlement of land revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters con nected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented pre vious to the final confirmation of such settlement.
- x Application relating to a supply for irrigation of water belonging to Government
- xi Application for leave to extend cultivation or to relinquish land, when presented to an officer of land revenue by a person holding, under direct engagement with Govern ment, land of which the revenue is settled but not per manently
- x11 Application for service of notice of relinquishment of land or of enhancement of rent

XIII Written authority to an agent to distrain

- xiv First application (other than a petition containing a cri minal charge or information) for the summons of a writess or other person to attend either to give evidence or to produce a document or in respect of the production or filing of an exhibit not being an affidavit made for
- the immediate purpose of being produced in Court
 xv Bail bonds in criminal cases, recognizances to prosecute or
 give evidence, and recognizances for personal appear
 ance or otherwise
- xx1 Petition application, charge or information respecting any offence when presented, made or laid to or before a Police officer, or to or before the ¹ Heads of Villages or the ² Village Police in the territories respectively subject to the Governors in Council of Madras and Bombay
- xvii Petition by a prisoner, or other person in duress or under restraint of any Court or its officers
- xviii Complaint of a public servant (as defined in the ³ Indian Penal Code), a municipal officer, or an officer or servant XLV of of a Railway Company
 - xix Application for permission to cut timber in Government forests or otherwise relating to such forests
 - xx Application for the payment of money due by Government to the applicant

See Madras Regulations VI of 1816 and IV of 1821 s 6 Mad Code See Bombay Village Police Vet (8 of 1867) ss 14 15 and 16 Bom Code Gent Acts Vol I

(Chapter IIIA - Probates, Letters of Almenestration and Certificates of Administration)

- xxi Petition of appeal against the 1 chaukidari assessment under Act No XX of 1856, or against any municipal
- xxii Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes 2
- xxiii Petitions presented to the Special Commissioner appoint ed under Bengal Act No II of 1869 (to ascertain, regulate and record certain tenures in Chota Nagpore)
- * xxiv [Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48 1

CHAPTER IIIA 6

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION

19A Where any person on applying for the probate of a will or Relef where letters of administration has estimated the property of the deceased to be court fee his of greater value than the same has afterwards proved to be, and has con been paid sequently paid too high a court fee thereon, if, within six months after · the true value of the property has been ascertained such person pro duces the probate or letters to the Chief Controlling Revenue authority '[for the local area] in which the probate or letters has or have been granted

- and delivers to such Authority a particular inventory and valuation of the property of the deceased verified by affidavit or affirmation,
- and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required.

the said Authority may-

(a) cancel the stamp on the probate or letters if such stamp has not been already cancelled

ITT P Code

² See no the Land Acquisition Act 189- (I of 1894) Genl Acts Vol IV 4 Bengal Code

⁴ This clause was substituted for the original clause by the Indian Christian Marriage Act 1872 (NV of 1872) s 2 nifree The original clause was as follows — petitions under the 14th and 15th of Victoria Ch 40 (on 1ct for marriages in Ind 0 s 5 or under Act No 5 of 1852 s 9

[•] Infra

[.] Chapter IIIA as in crted by the Probate and Administration 1ct 1875 (VIII of 1875) s 6 infra Substituted for the words of the Province by s 3 (1) of the Court fees (Amend

ment) Act 1901 (\ of 1901) Genl 'cts \ol V VOL II I

(Chapter IIIA -Probates, Letters of Administration and Certificates of

Administration)

- (b) substitute another stamp for denoting the court-fee which should have been paid thereon, and
- (c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his

Relief where debts due from a de ceased person have been naid out of his estate

19B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act.

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances

Rehef in case of several grants.

5 robates

declared valid as to

trust proper

ty though n teovered

by court

fer

19C Whenever 1 * a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the

property to which the former grant relates

19D. The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of admin ISTRATION

^{&#}x27;The word ' such " was repealed by the Repealing and Amending Act, 1891 (XII of 1891)

(Chapter IIIA - Probates, Letters of Administration and Certificates of Administration \

119E Where any person on applying for probate or letters of ad- Provision for ministration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue authority 2 [for the local area] in which the probate or letters has or have been probates granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administra tion to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty if the probate or letters is or are produced within one year from the date of grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court fee, without any deduction of the court fee originally paid on such probate or letters

case where too low a court-fee has been

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon

> Administra tor to give proper secu rity before letters stamped under sec tion 19E.

19F In case of letters of administration on which too low a courtfee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then escentamed.

> etc not paying full court-fee on probates ete within

3 19G Where too low a court fee has been paid on any probate or Executors letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such

> remit the whole or part of Probate and Administration) of the Court fees (\mend

· infra, s 19J

(Chapter IIIA - Probates, Letters of Administration and Certificates of Administration)

arr months after discove ry of under payment

Notice of applications for probate or letters of administra. tion to be given to Revenue au thorities and proce dure thereon probate or letters does not, within six months 1 * * * the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent on the amount of the sum wanting to make up the proper courtfee

- 2 19H (1) Where an application for probate or letters of adminis tration is made to any Court other than a High Court, the Court shall cause3 notice of the application to be given to the Collector
- (2) Where such an application as aforesaid is made to a High Court. the High Court shall cause notice of the application to be given to the Chief Controlling Revenue authority 'I for the local area in which the High Court is situated?
- (3) The Collector within the local limits of whose revenue juris diction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the second of any case in which application for probate or letters of administration has been made, and if, on such inspection or otherwise, he is of opinion that the petitioner has under estimated the value of the property of the deceased, the Collector may if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the pro perty has been under estimated, may require the petitioner to amend the valuation
- (4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required

Rene

Burma ece Burma Gazette 1902 Pt IV p 625

April 1875 or were repealed by the Genl Acts Vol IV by the Court fees Amendment Act

shed by the Chief Court of Lover

^{*}Substituted for the words of the Provinces ment let 1901 (\ of 1901) Cenl Acts Vol V by s 3 (*) of the Court fees Amend

(Chapter IIIA - Probates, Letters of Almenistration and Certificates of Administration)

by section 277 of the 1 Indian Succession Act, 1865, or, as the case may be, by section 9S of the Probate and Administration Act, 1881

- (5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry
- (6) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of adm nistration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous
- (7) The finding of the Court recorded under sub-section (5) shall be final, but shall not par the entertainment and disposal by the Chief Controlling Revenue authority of any application under section 19E
- (8) The Local Government may make rules for the guidance of Col lectors in the exercise of the powers conferred by sub-section (3)
- 3191 (1) No order entitling the petitioner to the grant of probate Payment of or letters of administration shall be made upon an application for such configers in the representation of the such as a subject to the property of the form set forth, in the third schedule, and the Court as the form set forth, in the third schedule, and the Court setters and perty in the form set forth in the third schedule, and the Court is letters of adsatisfied that the fee mentioned in No 11 of the first schedule has been paid on such valuation

- (2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub section (4)
- 319J. (1) Any excess fee found to be payable on an inquiry held Recovery of under section 19H, sub section (6), and any penalty or forfeiture under section 19G, may on the certificate of the Chief Controlling Revenueauthority be recovered from the executor or administrator as if it were an arrear of land revenue by any Collector in any part of British India

(2) The Chief Controlling Revenue authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part

Genl Acts Vol I Genl Acts Vol III

Inserted by a 2 of the Court-fees Amendment Act, 1899 (XI of 1899) Genl. Acts.

(Chapter IV -Process-fees)

of any penalty under section 19E or of any court-fee under section 19E in excess of the full court-fee which ought to have been paid.

1 19K. Nothing in section 6 or section 28 shall apply to probates or letters of administration

CHAPTER IV.

PROCESS-FEDS.

Rules as to cost of processes

Sentions 6 and 28 not

to apply to probate or letters of ad ministration

> 20. The High Court shall, as soon as may be, make rules 2 as to the following matters 3 -

1 The fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil 4 and Revenue 4 Courts established within the local limits of such jurisdic-

11 the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences

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1 Inserted by s 2 of Act XI of 1899
    As to the power t
the Lower Burma Cour'
missioner to make rul
Burma, see the Upper
Code As to power of
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Courts constituted under that Act, Bom Code Tenancy Act, 1901 (U P Act 11 of 1901), see U P Code

As to power of Chief Commissioner of British Baluchistan to make rules and pre-scribes fees, see the British Baluchistan Criminal Justice Regulation, 1836 (VIII f 1896), 8 20 (1) (a), and the British Baluchistan Civil Justice Regulation, 1896 (IX of 1896), 8 92 (a), Bal Code

For notifications issued under the powers conferred by this section in-

Aimer Merwara in conjunc see Al R and O

tion with s 22 see Bom R and O , Vol Bombay

see Burma Gazette, 1900, Pt I, p 325 Burma Madras see Mad R and O United Provinces of Agra

see U P R and O, and U P Gazette, 1904. and Oudh Pt I, p 261

For rules as to fees for serving and executing processes, see U P of Agra and Oudh Gazetto, 1903, Pt 1, p 45

For rules by Judicial Commissioner, Oudh, as to refund of process fees by Revenue Courts see U P Gazette, 1902, Pt 1, p 708 For Revenue Courts in Oudh, see U P Gazette, 1903, Pt I, p 45, and abid, 1904,

Pt 1, p 261 Central Provinces Central Provinces see C P R and O, and Central Provinces Greette, 1902, Pt II, p 466, and ibid, 1904, Pt III, p 373 (as to criminal processes)

*In the Punjab the words "and revenue" are repealed, see the Punjab Land revenue Act, 1837 (AVII of 1837), P and W Code

(Chapter IT .- Process-fees)

other than offences for which police-officers may arrest without a warrant, and

iii the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes

The High Court may from time to time alter and add to the rules so made

All such rules, alterations and additions shall, after being confirmed by the Local Government and sanctioned by the Governor General of India in Council, be published in the local official Gazette, and shall thereupon have the force of law

Confirmation and publica tion of rules

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied. and shall be deemed to be fees leviable under this Act

21. A table in the English and Vernacular languages, showing the Taples of fees chargeable for such service and execution, shall be exposed to view process fees. in a conspicuous part of each Court

22. Subject to 1 rules to be made by the High Court and approved by Number of the Local Government and the Governor General of India in Council,

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

ons in District and subordinate Courts

and for the purposes of this section, every Court of Small Causes Number of established under Act No XI of 1865 (to consolidate and amend the law peons in relating to Courts of Small Causes beyond the local limits of the Small Causes ordinary original civil jurisdiction of the High Courts of Judicature)2 Courts. shall be deemed to be subordinate to the Court of the District Judge

Assam, by the High Court, Calcutta

Madras

see Assam Gazette, 1902, Pt. IIA, p. 824 see Aj R and O

Aimer Merwara Bombay see Bom R and O

see Mad R and O, and Fort St George Gazette, 1901, Pt I, p 1904

United Provinces and Oudh see U P R and O Central Proxinces see C P R and O

As to Burma, see s 41 of the Lower Burma Courts Act, 1900 (VI of 1900)

The reference to Act XI of 1865 should now be read as to the Provincial Small Causes Courts Act, 1887 (1\ of 1887), s 2 (2) and (3), printed, Genl Acts, Vol 1\

For rules made under the powers conferred by this section in-

(Chapter IV -Process-fees Chapter V -Of the Mode of Levying Fees)

Number of peons in Revenue Courts

Rules for supply, num-

ber, renewal

and keeping accounts of stamps

123. Subject to rules 2 to be framed by the Chief Controlling Revenue authority and approved by the Local Government and the Governor General of India in Council, every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court by the Courts subordinate to him

24. [Process served under this Chapter to be held to be process within meaning of Code of Civil Procedure \ Rep by the Repealing and Amending Act, 1891 (XII of 1891)

CHAPTER V

OF THE MODE OF LEVYING FEES

25. All fees referred to in section 3 or chargeable under this Act -Collection shall be collected by stamps offees by stamps.

26. The stamps used to denote any fees chargeable under this Act Stamps to be shall be impressed of adhesive, or partly impressed and partly adhesive, Impressed or adhesive as the Governor General of India in Council may, by notification in the Gazette of India, from time to time direct 3

> 27. The Local Government may, from time to time, make 'rules for regulating-

5(a) the supply of stamps to be used under this Act,

2 For rules framed under the powers conferred by this section in-

see Mad R and O Madras

see Cen Prov Gazette, 1905 Pt III, p 570 Central Provinces see Assam Rules Manuil

As to Burma see s 41 of the Lower Burma Courts Act, 1900 (VI of 1900)

* For rules as to levy of court fees by adhesive and impressed stamps, see Gazette of India, 1883, Pt I, p 189

For rules under s 27 for-

(1) Ajmer Merwara, see Aj R & O Baluchistan, see Bal Code Bengal, see Ben R & O (4) Lombay, see Bom R & O

(6) (7) . p 647

* For tules as to levy of court fees by adhesive and impressed stamps, see Gazette of India, 1883 Pt 1, p 189

¹ In the Punjab, s 23 is repealed-see the Punjab Land revenue Act, 1887 (XVII of 1887), P and N W Code

(Chapter I -Of the Mode of Levying Fees Chapter VI - Miscellaneous)

- (b) the number of stamps to be used for denoting any fee chargeable under this Act,
- (c) the renewal of damaged or spoiled stamps, and
- (d) the keeping accounts of all stamps used under this Act.

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law

28. No document which ought to bear a stamp under this Act shall Stamping be of any validity, unless and until it is properly stamped for a paid.

But, if any such document is through mistake or madvertence

received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may '-Court, may, if he may direct and, be pour thir

ceeding relative thereto shall be as valid as if it-had

stamped in the first instance Amended 29. Where any such document is amended in order merely to cor

rect a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stump to paya fresh freun!

30. No document requiring a stamp under this Act shall be filed or acted upon in my proceeding in any Court or office until the stamp has been cancelled

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed

document

of stamp

CHAPTER VI

MISCELLANEOUS

31. 1 Whenever an application or petition containing a complaint Repayment or charge of an offence, other than an offence for which police-officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed

Admission

in criminal

cases of documents for

which proper

fee has not been paid.

Sale of

stamps

(Chapte VI -Miscell aneous)

upon him order him to repay to the compla nant the fee paid on such application or petition

- 11 In the case mentioned in section 18, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination
- 111 When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant
- iv All tees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court

32 [Amendment of Act VIII of 1859 and Act IX of 1869] Rep

by the Repealing and Amending Act 1891 (AII of 1891)

33 Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition

34. (1) The Local Government may from time to time make 2 rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale 18 to be conducted, and the duties and remuneration of such persons

(2) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law

(3) Any person appointed to cell stamps who disobeys any vule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred runees, or with both

Ajmer | erwara | see Gazette of India 1903, Pt. II p 1069 | see BR & 0 and Calcutta Gazette 1907, Pt. II p 1069 | Bombay | Edward | Edward

Eastern Bengal and Assam Punjab

United Provinces

¹This section was substituted for the original section by the Repealing and Amending Act 1891 (AlI of 1891) Geal Acts, Vol IV
²For rules made by —

(Chapter VI -Miscellaneous)

35. The Governor General of India in Council may, from time to Power to time by 'notification in the Gazette of India, reduce or remit 2, in the reduce or whole or in any part of British India, all or any of the fees mentioned in the first and second schedules to this Act annexed,

and may in like manner cancel or vary such order

36. Nothing in Chapters II and V of this Act applies to the com- Saving of mission payable to the Accountant General of the High Court at Fort fees to cor-William, or to the fees which any officer of a High Court is allowed to of High receive in addition to a fixed silary

Courts

.. . بحسد برزد ما مالاند

^{*} See Gen. R and O *For remission of duty payable under the Act in respect of Indian probates letters of administration or succession certificates on the share or other interest of a deceased member of a company formed under Act VI of 1802; provided that the said share or interest was regulated in a branch register in the United Kingdom under Act IV of 1800. and that such member was at the date of his decease domiciled elsewhere than in India, see rotification No 881 L R Gazette of India 1900 Pt I p 100

^{&#}x27; revenue see

of country te of India,

SCHEDULE I

Ad valorem fees.

Number		Proper Fee
I *Plaint I [written state mean pleading a set off or counter-claim] or memorandum of appeal (not otherwas provided for in this Act) I for chross objection] presented to objection presented to come court except those mentioned in sec tion?	When the amount or value of the subject matter in dis pute does not exceed five rupces	Six annas
	When such amount or value exceeds five rupees, for every five rupees, or put thereoi, in excess of five rupees up to one hundred rupees	Cix annag.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof in excess of one hun dred rupees up to one thou sand rupees	Twelve annas,
	pees, or part thereof, in ex cess of one thousand rupses,	Five rupees.
	When such amount or value exceeds five thousand rup- ees, for every two hundred and fifty rupees, or part thereof, m excess of five thousand rupees up to ten thousand rupees	Ten rupees.
	When such amount or value exceeds ten thousand rup- ees for every five hundred rupees, or part thereof, in excess of ten thousand rup- ees, up to twenty thousand rupees	Fifteen rupees.
	When such amount or value exceeds twenty thousand rupees, for exerv one thou sand rupees or part thereof, in excess of twenty thousand rupees, up to thirty thou sand rupees.	Twenty rupees,

^{*}To ascertain the proper fee leviable on the institution of a suit, see the table annexed to this schedule.

¹ These words were inserted by a. 155 and the Fourth Schedule of the Code of Civil Procedure (Act V of 1908), Genl Acts, Vol VI

SCHEDULE I-contd

Ad valorem fees-contd.

	1	T
Number	l	Proper Fee
	When such amoust or value exceeds thirty thousand rup ees for every two thousand rupees or part thereof in excess of thirty thousand rupees up to fifty thousand rupees.	Twenty rupees.
1 • Plaint, etc —contd	When such amount or value exceeds fifty thousand rup ees, for every five thousand rupes or part thereof in excess of fifty thousand rup ees	Twenty five rupees
2 Plaint l*** in a suit for	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	A fee of one-half the amount
possession under 2 [the Specific Relief Act 1877, section 9]	ļ	prescribed in the foregoing scale.
3 [Repealed by 4ct VIII of 1871]	را	
4 Application for review of judgment 3 if presented on or after the ninetieth day from the date of the decree		The fee leviable on the plant or memorandum of appeal
5 Application for review of judgment 3 if presented before the ninetieth day from the date of the decree	,	One-half of the fce lev able- on the plaint or memo randum of appeal,
6 Copy or translation of a judgment or order not being or having the force of a decree	When such judgment or order is passed by any Caril Court other than a High Court or by the presiding officer of any Peve use Court or Office or by any other Judicial or Executive Authority—	,
	(a)—If the amount or value of the subject matter is fifty or less than fifty rupees	Four annas

*To ascertain the proper fee leviable on the institution of a suit see the table annexed to it is schedule

9 (to provide I of 1891)

V of 1906)

Ad valorem fees-contd

	, 	
Number		Proper Fee
6 Copy, etc —conid	(b) —If such amount or value exceeds fifty rupees	Fight agnis.
3 300, 400 - 500, 20	When such judgment or order is passed by a High Court.	One rupee
	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court— (a) —If the amount or value	Eight annas.
7 Copy of a decree or order having the force of a decree	of the subject mat- ter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	
	(b) If such amount or value exceeds fifty rupees,	Ore rupee
Į	When such decree or order 19 made by a High Court	Four rupees.
8. Copy of any docu ment liable to stamp-duty under the Indian Stamp Act, 1879,1 when left by any par by to a suit or proceeding in	(a) — When the stamp duty chargeable on the ori ginal does not exceed eight annas	The amount of the duty charge able on the original I of 1
place of the original with	(b)In any other case	Fight annas
globy of any revenue or ultimate proceeding or order not otherwise provided for by this tet, or copy of any account, attement report or the like, aken out of any Chirl or Crimu all or Revenue Court or Officer from the order of any chief from the globy of the provided by the process of the court of the crime administration of a Direction.	For every three hundred and satty words or fraction of three hundred and satty words	Eight annas
10 [Repealed by the Grard ans and Wards Art, 1890 VIII of 1890)]		
211 Probate of a will or cetters of administration with be without will annexed.	If the amount or value of the property in respect of which the grant of probate or let ters is made exceeds one thousand rupees	Two per centum on such am ount or value provided that when after the grant of a certificate under the Succession Certificate Act, VII f I

I So now the In inan Stamp Let 1899 (II of 1899) General Acts, Vol V The articles 11 12 and 12A here prented were substituted for the original articles 11 and 12, by the Statesvino Certificate Let 1890 (111 of 183) a 13 (1) General Acts Vol IV

Ad valorem fees-contd.

Proper Fee
1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code ¹ No VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the latter grant shall be reduced by the amount of the fee pay also in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.
Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificitie is catended under section 10 of the Act
Note—{1} The amount of a debt is its amount, includ ing interest on the day on which the inclusion of the debt in the certificate is uppied for so far as such amount can be ascertained
(2) Whether or not any pore or with respect to a security specified in a certificate has been conferred under the Act and where such a power has been so conferred; and the conferred control of the conferred control of the conferred control of the conferred confer

¹ Bom Code
2 See econd foot note on preceding page
3 General Acts, Vol. IV.

Ad valorem fees-contd.

Number		Proper Fee	
112A Certificate under the Regulation of the Bombay Code ² , No VIII of 18°7		(1) As regards debts am securities, the sume fee a would be payable in respect of a certificate under the Succession Certificate Act 1859 3 or in respect of an extension of such a certificate, as the case may be and	VII of 1889
		(2) as regards other property in respect of which the certificate is granted, two per centum on so much of the amount or value of such property as exceeds one thousand rupers.	
413 Application to the Chief Court in the Punjab for the exercise of its jurisdiction under section 70 of the Punjab Courts Act 1881, as	When the amount or value of the subject-matter in dispute does not exceed twenty five rupees	Two rupees.	X) III of
runjah Courty Ac. 1847, as amended by the Punjah Courts Act 18495 for to the Court of the Financial Com- missioner of the Punjah for the exercise of its levisional jurisdaction under section 44 of the Punjah Tenancy Act, 1887]	When such amount or value exceeds twenty five rupees	The fee leviable on a memo rindum of appeal	1884 4 XXV of 1899
[614 Apple ation to the Chief Court of Lover Purma for the exercise of its revi aional principation under sec tion 622 of the 7Code of Civil	When the amount or value of the subjectin after in dispute does not exceed twenty five rupees	Тио гирееч	XIV of 1882
Procedure or section 25 of the 8Provincial amail Causes Courts Act, 1887]	When such amount or value exceeds twenty five rupous	The lee leviable on a memor	IX of 1887

¹ See second foot-note on p 126 2 Bom Code 1 Commel Acts Vol IV

SCHEDULE I-contd.

Ad ralorem fees-contd.

	Number	-	Proper I ee
	[1 15 Application to the Court of the Judicial Commissioner, Upper Butma, for the exercise of its rivisional	When the amount or value of the subject-n atter in dispute does n t exceed twenty-five	Iwo rupees
XIV of 1882.	jurisdiction under section 622) of the 2 Code of Crid Pro cedure or action 25 of the 2 Fromucial Small Course Courts Act, 1897 6***** 1	rupees When such amount or value exceeds twenty fire rupees	The fee leviable on a memo- randum of appeal

Table of rates of ad valorem fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee
Ra	Rs	Rs, A P
	5	0 6 0
5	10	0 12 0
10	15	1 2 0
15	20	1 8 0
20	25	1 14 0
23	30	2 4 0
30	35	2 10 0
35	40	3 0 0
40	45	3 6 0
45	50	3 12 0
50	55	4 2 0
55	60	4 8 0
co	65	4 14 0
65	70	5 4 0

¹ This article was inverted after art 14 in the application to Upper Burms of the first schedule, by the Upper Burms Civil Courts Regulation 1896 (I of 1896), a 36, Bur Code

² See now Act V of 1909, General Acts, Vol VI.

³ General Acts Vol III 4 The words and figures "or section 14 of the Upper Burma Civil Courts Pegulation, 1898." were repealed by the Upper Burma Civil Courts (Amendment) Regulation 1902 (V of 1903), . 4

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4 57 y Jan 1922

1 1 1 1 1

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Court-fees.

SCHEDULE I—contd.

Table of rates of ad ralorem fees, etc .-- contd

R4 A P 24 0 0 24 12 0 25 8 0 26 4 0
24 12 0 25 8 0
25 8 0
l l
26 4 0
27 0 0
27 12 0
28 8 0
29 4 0
30 0 0
30 12 0
31 8 0
32 4 0
33 0 0
33 15 0
34 8 0
35 4 0
36 0 0
36 12 0
37 8 0
38 4 0
39 0 0
39 12 0
40 8 0
41 4 0
42 0 0
42 12 0

Table of rates of ad valorem fees, etc .- contd

When the amount or value of the subject matter exceeds	But does not exceed	Proper Fee
Rs	Rs	Ro A P
580	590	44 4 0
590	600	45 0 0
600	610	45 12 0
610	620	46 S 0
620	630	47 4 0
630	640	48 0 0
640	620	48 12 0
650	669	49 R O
660	670	50 4 0
670	680	51 0 0
680	690	51 12 0
690	700	52 8 0
700	710	53 4 0
710	720	54 0 0
720	730	54 12 0
730	740	55 8 0
740	750	56 4 0
750	760	57 0 0
760	770	57 12 0
770	780	58 8 0
780	790	50 4 0
790	800	60 0 0
800	810	60 12 0
810	820	61 8 0
820	830	62 4 0
630	840	63 0 0
840	850	63 12 0

Table of rates of ad valorem fees, etc .- contd.

Then the amount or value of the subject matter exceeds	But does not exceed	Proper Fee.
Rs	Rs	Rs A P.
850	860	64 8 0
860	870	65 4 0
870	890	66 0 0
880	890	66 12 0
890	900	67 8 0
900	910	68 4 0
910	920	69 0 0
920	930	69 12 0
930	940	70 8 0
940	950	71 4 0
950	960	72 0 0
900	970	72 12 0
970	980	73 8 0
940	990	74 1 0
990	1,000 -	75 0 0
1,000	1,100	80 0 0
1,100	1,200	85 0 0
1,200	1 300	90 0 0
1,309	1 400	95 0 0
1,400	1,500	100 0 0
1,500	1,600	105 0 0
1,600	1,700	110 0 0
1,700	1,800	115 0 0
1,800	1,900	120 0 0
1,990	2,000	125 0 0
2 000	2,100	120 0 0
2,100	2,200	135 0 0

Table of rates of ad valorem fees, etc -contd

When the amount or value of the subject matter exceeds	But does not exceed	Proper Fee.
Re	R•	P. A P
2,200	2 300	140 0 0
2,300	2 400	145 0 0
2 400	2 500	150 0 0
2,500	2 600	155 0 0
2,600	2,700	160 0 0
2 700	2 800	165 0 0
2 800	2 900	170 0 0
2 900	3 000	175 0 0
3 000	3 100	180 0 0
3,100	3 200	185 0 0
3 200	3 300	190 0 0
3 300	3 400	195 0 0
3 400	3 500	200 0 0
3 500	3 600	205 0 0
3 600	3 700	210 0 0
3,700	3 800	215 0 0
3 600	3 900	220 0 0
3 900	4 000	225 0 0
4,000	4 100	230 0 0
4,100	4,°00	233 0 0
4,200	4,300	240 0 0
4 300	4 400	245 0 0
4,400	4,500	250 0 0
4,500	4 600	255 0 0
4 600	4,700	260 0 0
4 700	4 800	2,5 0 0
4,800	4 960	270 0 0

Table of rates of ad valorem fees, etc -contd

When the amoust or value of the subject n after exce da	But do a not exceed	l'roper I se
P4	R«	R= A P
4 900	5 000	270 0 0
5 000	5 200	285 0 0
5 250	5 500	295 0 0
5 500	5 750	305 0 O
5 750	6 000	315 0 0
6 000	6,250	375 0 0
r 50	fi 500	შ3ა 7 0
6 500	6 750	345 0 0
6 750	7 000	3,5 0 0
7 000	7 2/0	3სან 0 0
7 50	7 500	375 0 0
7 500	7 750	385 0 0
7 700	8 000	395 0 0
8 000	8 °50	40ა 0 0
8 250	8 500	415 0 0
8 500	8 750	4°5 0 0
8 750	9 000	435 0 0
9 000	9 250	445 0 0
9 50 °C	9 300	455 U U
9 500	9 750	465 0 0
9 750	10 000	475 0 0
10 000	10 500	490 0 0
10 500	11 000	50o 0 0
000 11	11 500	5~000
11 500	1° 000	535 0 0
12 000	1° 500	550 0 0

SCHEDULE I-contd.

Table of rates of ad ralorem fees, etc .- contd.

When the amount or value of the subject matter exceus	But does not exceed	Proper Fee,
Rs	Re	R. A. P.
12,500	13,000	565 O O
13,000	13,500	580 O O
13,500	14,000	595 0 0
14 000	14,500	610 0 0
14,500	15 000	625 0 0
15,000	15 500	640 0 0 .
15 500	16,000	655 0 0
16,000	16,500	670 0 0
16,500	17,000	685 0 0
17,000	17,500	700 0 0
17,500	18 000	715 0 0
18,000	18,500	730 0 0
18,500	19,000	745 0 0
19 000	19 500	760 0 0
19 500	20 000	775 0 0
20 000	21,000	795 0 0
21,000	22,000	815 0 0
22 000	23,000	835 0 0
23,000	24,000	853 O O
21,000	25,000	875 0 0
25,000	26,000	895 0 0
26 000	27,000	915 0 0
27,000	23,000	935 0 0
29,000	20 000	955 0 0
29 000	30 000	975 0 0
30,000	32,000	995 O O
32,000	31,000	1,015 0 0

Table of rates of ad valorem fees, etc -contd

Then the amount or value of the subject-n atter exce. Is	But does tot exceed	Proper Fee
Rs.	R«.	R 4 1
34 000	36 000	1035 0 0
36 000	२५ 000	1050 0 0
38 000	40 000	10 a 0 0
40 000	49 000	0 0 د109
4° 000	44 000	111a 0 0
44 000	48 000	113 0 0
40 000	48 000	1 155 O O
49 000	50 000	11"5 0 0
50 000	55 000	1 00 0 0
55 000	60 000	1205 0 0
60 100	65 000	1 °50 0 0
65 000	0 000	195 0 0
70 000	75 000	1300 0 0
75 000	80 000	1325 0 0
80 000	000 د8	1350 0 0
85 000	90 000	13 0 0
90 000	95 000	1400 0 O
მი 000	1 00 000	1495 0 0
1 00 000	10 000	14000
1 0 000	1 10 000	1 175 0 0
1 10 000	1 15 000	1 500 0 0
1 15 000	1 % 000	10000
1 *0 000	1 % 000	0 0 0 0 1
1 ° 3 000	1 30 000	1 0 5 0 0
1 30 000	1 3 000	1 600 0 0
1 % 000	1 40 000	1600 0 0
1 40 000	1 4ა 000	1650 0 p

Table of rates of ad valorem fees, etc -contd

When the amount or value of the subject matter exceeds	But does not exceed	Proper Fee
Rs.	Rs	Rs A P
1 45 000	1 50 000	1675 0 0
1 50 000	1 55 000	1700 0 0
1 50 000	1 60 000	175 0 0
1 60 000	1 65 000	1750 0 0
1 65 000	1 70 000	1775 0 0
1 70 000	1 75 000	1 800 0 0
1 75 000	1 80 000	1825 0 0
1 80 000	1 85 000	1850 0 0
1 85 000	1 90 000	1875 0 0
1 90 000	1 9ა 000	1900 0 0
1 95 000	2 00 000	1975 0 0
2 00 000	° 05 000	1950 0 0
2 05 000	2 10 000	1 975 0 0
2 10 000	2 15 000	°000 0 0
2 15 000	2 ^0 000	2020 0 0
2 % 000	2 25 000	2000 0 0
2 25 000	2 30 000	20000
2 30 000	2 35 000	° 100 0 0
2 35 000	2 40 000	2 125 0 0
7 40 000	2,45 000	2 150 0 0
2 45 000	* 50 000	2 175 0 0
2 50 000	2 55 900	2 000 0 0
2 55 000	2 60 000	2 225 0 0
2 60 000	2 ჩა 000	2 250 0 0
2 65 000	2 70 000	2 275 0 0
2 70 000	o = 5 000	2 390 0 0
* 75 000	2 90 000	2375 0 0

Table of rates of ad valorem fees, etc -concld

When the amount or value of the subject matter exceeds	But does not exceed	Proper Fee
Rs	Rs	Rs A P
2 80 000	2 85 000	2 350 0 0
2 85 000	2 90 000	2 375 0 0
2 90 000	2 95 000	2400 0 0
2 95 000	3 00 000	9495 0 0
3 00 000	3 0ა 000	2 450 0 0
3 00 000	3 10 000	° 475 0 0
3 10 000	3 15 000	2 500 0 0
3 15 000	3 20 000	25% 0 0
3 20 000	3 2ა 000	2 550 0 0
3 25 000	3 30 000	2 575 0 0
3 30 000	3 35 000	2 600 0 0
3 35 000	3 40 000	2 625 0 0
3 40 000	3 45 000	2 650 0 0
3 45 000	3 50 000	2 675 0 0
3 50 000	3 55 000	2 700 0 0
3 55 000	3 60 000	2 725 0 0
3 60 000	3 6ა 000	2 750 0 0
3 65 000	3 70 000	2775 0 0
3 70 000	3 75 000	↑800 O O
3 75 000	3 80 000	2875 0 0
3 80 000	3 85 000	↑850 0 0
3 85 000	3 90 000	2875 0 0
3 90 000	3 90 000	2 900 0 0
3 95 000	4 00 000	29% 0 0
4 00 000	4 03 000	29.0 0 0
4 05 000	4 10 000	2975 0 0
4 10 000	ļ	3000 0 0

SCHEDULE II.

Fixed Fees.

Number		Proper Tee
I Application or petition	(a)—When presented to any officer of the Customs of	One anna.

The words "for to any Cantonment Magnistrate sitting as a Court of Child Jodesture under Act No. III of 1850" were repealed by the Cantonments Act, 1889 (XIII of 1850), General Acts Vol IV

⁽XII of

Fixed Fees-contd

Number		Proper Fee.
Application or petition—contd	amountor value of the subject-matter is less than fifty rupes or when presented to any Cwil, Criminal or Revenue Court or to any Board or careet tive officer for the account of the court	One anna
	(b)—When containing a com plant or charge of any offence other than an offence for which police offi cers may under the Criminal Procedure Code 1 arrest with out warrant and pre- Cout to any Criminal or when presented to a Civil Criminal or Revenue Court or to a Collector or any Revenue officer hav my pursaliction equal or Collector or to any Magistrate in his exe cutive capacity and not otherwise provid ed for by the Act or to deport in Court revenue or critical by or Court of the my any Collector or to any Magistrate in his exe cutive capacity and not otherwise provid ed for by the Act or to deport in Court revenue or critical by or Court of the amount	Eightennet
	of compensat on to be paid by a landlord to his tenant. (c) —When prevented to a Chief Commissioner or other Chief Control ling Revenue or Executive Authority or to a Commissioner of Revenue or Circuit on the Chief Control of Commissioner of Revenue or Orient to to any chief officer	One rupee

¹ See now the Code of Criminal Procedure 1898 (Act V of 1898), General Acts Vol. V

SCHEDULE II—contd. Fixed Fees—contd

Proper Fee Number 1 -Application or petition charged with the exe--concld cutive administration of a Division and not otherwise provided for by this Act. (d) -When presented to a High Court. Two rupees. 2 Application for leave to Eight annas. suc as a pauper 3 Application for leave to (a) -When presented to a One rupee appeal as a pauper District Court (b) -When presented to a Two rupees Commissioner or a High Court. 4 Plaint or memorandum of appeal in a suit to obtain poss ssien under Act 1 No XVI of 1838, or 2 [the 3 Mamlatdars Bom III of Courts Act 18701 1876 5 Plaint or memorandum of appeal in a suit to establish or disprove a right of occupan 45 Bull bond or other in Eight annas strument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the 5 Code of Cri mipal Procedure, 1882, or the X of 1882. 6 Code of Civil Procedure XIV of 7 Undertiking under see 1882 tion 49 of the 7 Indian Divorce IV of 1869 Act 8 [Rep. by the Reyeal ng and Amending 1ct 1891 (XII of 1891) 1 9 [Repealed by Act XII of 1891] 10 Mukhtárnama or Wak When a resented for the con álatnáma. duct of any one case-(a) -to any Civil or Criminal Eight annas.

Court other than a High Court, or to any

¹ Bom. Code, Vol I.

These words were substituted for the words "Bombsy Act V of 1864" (to give Mamlattars"

- ossession or to restore possession to any

Repealing and Amending Act, [80]

^{)6 (}Bom Act II of 1996), Bom Code

⁴This acticle was substituted for the original article 0, by the Probate and Administration Act. 1889 (VI of 1889) s 18 (2) General Acts, vol. 11 V. Theoriginal articles an as follows —"Ball bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Courto or executive authority".

⁵ See now the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.
6 See now Act V of 1999, General Acts, Vol. VL

⁷ Supra.

Fred Fees-contd.

Number		Proper Fee
10 —Mukhtárnáma or Wakálat nama—concid.	Recense Court or to any Collector or Mag istrate, or other ere cutive officer except such as are mentioned in chauses (b) and (c) of this number.	
	(h)—to a Commissioner of Revenue, Circuit or Customs or to any offi cer charged with the executive administration of a Division not being the Chief Revenue or Executive Au thority.	One rupee
	(c)—to a High Court, Chief Commissioner Board of Revenue or other Chief Controlling Revenue or Frecutive Authority	Two rupees,
II Memorandum of appeal when the appeal is not I * * * * from a decree or an order having the force of a decree, and is presented—	(a)—to any Gaul Court other than a High Court, or to any Pevenue Court or Precutive Officer other than the High Court or Chief Controlling Revenue or Executive Authority,	Fight annas.
	(b)—to a High Court or Chief Commissioner, or other Chief Control ling Executive or Rev	Two rupees
12 Cavent 13 Aprheation under Act 2 No X of 1859 section 26 or 3 Bengal Act No VI of 1862 section 9 or 4 Penmal Act No VIII of 1869 section 37	enue Authority	Five rupees.

¹ The words from an order rejecting a plaint er were omitted by a 155 (Sch. 4) of the Code of Civil Precedure (Act V of 1908), General Acts Vol. VI

f: t L

² Act X of 1959 was repealed by an those portions of the Lower Prov Division (except Manbhum and Tenant Proce ture Act, 1879 (Ben by Act XVIII of 1873, and in the 1883 (IX of 1893), C. P. Code

⁴ Bengal Act VIII of 1869 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885)

SCHEDULE II-concld.

Fixed Fees-concld.

14 Petition in a suit under the Native Converts Mirring Dissolutin set, 1807 1 10 Dissolutin set, 1807 1 11 Plaint or memoran dimin of appeal in cach of the following suits — 1 to alter or est aside a summary decision or order of a summary decision or order of a summary decision or established by Letter Patent or established by Letter	Number		Proper Pee	
If Plant or memoran dum of appeal at each of the following suits— It to after or set aside a summary decision or order of a summary decision or order of a summary decision or order of any of the Cult Court's not established by Latter Patent or of any Revenue Court of the same of proprietors of revenue pay ing estated in the court of the same	the Native Converts Mirriage Dissolution Act, 1860 1 15 1Ret 4ct V of 1998 1 16 1R c at thy Act VI of		Five supees	XXI of 1866
the Madian Divorce Act ex TY of recept perturns under eretinn 44 of the same Act and every memorandum of appeal under exceeding the same Act. Twenty rupees section 5.9 the same 'vt.	It Plant or memoran dum of appeal at each of the following units — 1 to alter or set aside a summary decision or order of any of the Cutt Courts into each of any of the Cutt Courts into each of any Revenue Court in to alter or cancel any entry in a register of the names of proprietors of revenue paying estates in to be a consequential each of the court o		Ten rupees	V of 1998,
of appeal on ler the Places Mar	the Sindian Divorce Act except petitions under section 44 of the same Act and every memorandum of appeal under section 55 of the same Act. 21 Haint or memorandum	•••	Twenty rupees	

¹ General Acts Vol L 2 ce now the Code of C vil Procedure, 1909 (Act V of 1909) accoud schedule, General Acts, Vol. VI

³ Substituted by a. 155 (4th Sch.) of the Code of Civil Procedure (Act V of 1908) for the original entry which was as follows — "Agreement under section 323 of the same Code". 4 Concerd Acts, Vol VI.

⁵ Supra

SCHEDULE III

(See section 19 I)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY, AS MAY BE NECESSARY)

IN THE COURT OF

Re Probate of the Will of and credits of (or administration of the property
) deceased

and credits of ,) deceased {
solemnly silir.
make cath

and say that I am the executor (or one of the executors or one of the next of kin) of , deceased, and that I have truly set forth in Annexiro A to this affidavit all the property and credits of which the abovenamed deceased died possessed or was entitled to at the time of his death, and which have come that the contraction is to the contraction of the c

or are likely to come, to my hands
2 I further say that I have also truly set forth in Annexure Ball the

items I am by law allowed to deduct

ANNUXURE A

3 I further say that the said assets, exclusive only of such last-mentioned them, but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased, are under the value of

VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY OF , DECEASED	
Cash in the house and at the banks household goods, wearing apparel, books, plate jewels etc (State est mated value according to best of Executor's or Adm nistrator's beiter) Property in Government securities transferable at the	
Public Debt Office (State description and value at the pisce of the day, also the interest separately, calculating it to the time of making the application) Immoveable property consisting of	
(State description, guing, in the case of houses, the ansessed value if any, and the numbe of years' assessment the mixtet value is estimated at, and, in the case of lund, the a ea, the market value and all rents that have accred)	
Heasehold property. If the decoare held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the white of such inserting separately arrears due at he date of death and all rents received or due since that date to the time of making the application?	

This seh lulo was inserted by the Court fees Amendment Act, 1899 (XI of 1899), s. 3 General Acts Vol V Tic original Schedule III was repealed by Act XIV of 1870 Vol. II

	Rs	l A.	P
Property in public companies (State the particulars and the value calculated at the particulars and the value calculated at the price of the day, also the interest separately, calculating it to the time of making the application) Policy of insurance upon life, money out on mortgage and other securities such as bonds, mortgages, bills, notes and other securities for money (State the amount of the whole, also the interest separate ly, calculating it to the time of making the application) Book debts (Otter than lad) Stock in trade (State the estimated value, if any) Other property not comprised under the foregoing heads (State the estimated value, if any)			
TOTAL			
Deduct amount shown in Annexure B not subject to duty New Lotal			
ANNI'VURI B Schedulf of Debts, fic Amount of debts due and owing from the deceased, payable by law out of the estate Amount of funeral expenses Amount of nortigage neumbrines Property held in trust not beneficially or with general power to confer a beneficial interest Other property not subject to duty	Re	•	P
101(1			

ACT No VIII of 1870 1

[18th March 1870]

An Act for the Prevention of the murder of Female Infants

WHEREAS the murder of female infants is believed to be commonly Preamble

hereby enacted as follows -

committed in certain parts of British India, and whereas it is necessary to make better provision for the prevention of the said offence, It is

1 If it shall appear to the Local Government that the said offence Power to is commonly committed in any district or by any class, or family, or take measures persons residing therein, the Local Government may, with the previous under act in sanction of the Governor General of India in Council, declare by noti fication published in the official Gazette, and in such other manner as the Local Government shall direct, that measures for the prevention of such offence shall be taken under this Act, in such district, or in respect of such class, or family or persons 2

The notification shall define the limits of such district, or shall specify the class, or family or persons to whom such notification is to be deemed to apply

2 When such notification shall have been published as aforesaid, Power to it shall be lawful for the Local Government subject to the provisions of section 3, from time to time to make jules consistent with this Act

for all or any of the following purposes -(1) for maling and maintaining registers of births marriages and deaths occurring in such district or in or among the

Short title The Female Infanticide Prevent on Act 1870 See the Ind an Short

1d1a 1870 Pt V p 15 473

the Scheduled Districts the following Scheduled

Districts namely -rat namery—

the Districts of Hazáribágh Lohárdaga and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singbbum see Gazette of India 1881. Pt I p 504 The District of Lohárdaga included at this time the present of the Conference of f Lohárdaga I p 44

the Arakan infra

f persons in . in the Pro ast of Local

It. Ip 295 VOL II

12

class, family or persons to whom such notification has been made applicable, and for making, from time to time, a census of such persons, or of any other persons residing within such district 1

- (2) for the entertainment of any police force in excess of the ordinary fixed establishment of police, or for the entertainment of any officers or servants, for the purpose of preventing or detecting the murder of female infants in such district, or in or among such class, family or persons, or for carrying out any of the provisions of this Act
- (3) for prescribing how and by whom information shall be given to the proper officers of all births, marriages and deaths occurring or about to occur in such district, or in or among such class, family or persons
- (4) for the regulation and limitation of expenses 2 incurred by any person to whom such notification applies on account of the celebration of marriage or of any ceremony or custom connected therewith
- (5) for regulating the manner in which all or any of the expenses incurred in carrying into effect rules made under this section shall be recovered from all or any of the inhabitants of such district, or from the persons to whom such notification is applicable 3
- (6) for defining the duties of any officer or servant appointed to carry out any rule made under this section

3. No rule or alteration made under section 2 shall take effect until it shall have been confirmed by the Governor General of India in Council and published in the Gazette of India and also in the local

Copies of every such rule shall be affixed in such places, and shall be distributed in such manner, as the Local Government may direct

4 Wheever disobeys any such rule shall, on conviction before any officer exercising the powers of a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

5 Nothing in this Act, or in any rule made and published as afore said, shall prevent any person from being prosecuted and punished under any other law for any offence punishable under this Act Provided that no person shall be punished twice for the same offence

Confirmat on an l publica tion of rules

Gazette

Punishment for breach of rules

Saving of Prosecutions under other laws

> e classes referred to Bom R & O to supra see ibid les made thereunder t to whom the Act

. Ill of 18"0), Bom

1- 1- 5

6 If it appears to the Magistrate of the District that any person, to Power to whom the notification mentioned in section 1 applies, neglects to make place neglect proper provision for the maintenance of any female child for whose under super maintenance he is legally responsible, and that the life or health of such vis on. child is thereby endangered, such Magistrate may, in his discretion, place the child under such supervision as he may think proper, and

shall, if necessary, remove the child from the custody of such person The Magistrate of the District may order him to make a monthly allowance for the maintenance of the child at such monthly rate not exceeding fifty rupees as to such Magistrate shall seem reasonable, and, if such person wilfully neglects to comply with such order, such Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in manner provided by section 611 of the Code of Criminal Procedure

Nothing in this section shall affect the powers of a Magistrate under section 3162 of the same Code

7 This Act shall in the first instance extend only to the North Extent of Western Provinces to the Punjab and to Oudh, but the Governor Act. General of India in Council may by order extend it to any part of the

territories (other than Oudh) under the immediate administration of the Government of India and the Governor of Madras in Council, the Governor of Bombay in Council and the Lieutenant Governor of Bengal may severally by order extend it to any part of the territories under their respective Governments

Every order under this section made by the Governor General of India in Council shall be published in the Gazette of India Every other order made under this section shall be published in the local official Gazette

See nov Act V of 1898 ss 386 and 387 General Acts Vol V
See now Act V of 1898 s 488 ibid
The Act has been declared to extend and to have extended from the 21st December

¹⁸⁷⁰ to the Presidency of Bombay, by s 2 of Bombay Act III of 1897 (to amend Act VIII of 1870) Bom Code

Court-fees. Wills of Hindus, etc.

f1870 : Act XX. [1870 : Act XXI.

[5th July, 1870.]

ACT No. XX of 1870.1

An Act to correct two clerical errors in the Court-fees Act, Preamble

1870. For the purpose of corecting two clerical errors in the Court-fees Act, 1870; 2 It is hereby enacted as follows:-

Corrections of Act VII of 1870, sect on 15 and Schedule I. No. 2

1. Section 15 of the said Act shall be read as if, for the words "plaint or memorandum of appeal," the word "application" were substituted; and in Schedule I to the said Act annexed, No. 2 shall be read as if the words "or memorandum of appeal" were omitted therefrom.

ACT No. XXI or 1870.3

[19th July 1870.] An Act to regulate the Wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and the towns of Madras and Bombay.

Preamble

Whereas it is expedient to provide rules for the execution, attestaat me at the At Am adment And 1970 Con the Indian Short Titles

> V, p 166; pper Burma Jurma Laws dation (III of

1899 (III of 1899), Ben Code
It has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, infra, to be in force in the following Scheduled Districts,

the District of Hazáribágh . See Gazette of India, 1881, Pt I, p 507. the District of Lohárdaga . the Pargana of Dhálbhum in Ditto

The District of Singbhum.

Ditto District of Singbhum aga included at this time the prevent District of Palman, which was separated in 1894; the District of Lohárdaga is now called the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44]

the North Western Provinces See Gazette of India, 1876, Pt 1, p. 505 Tarái . As to its extension as part of Act VII of 1870, see footnote on p 102, supra

n Council, see shid, 1869, Supple nt, p 34, and Supplement, p 957. 3 (a) of the Scheduled Districts orce in the following Scheduled Districts, namely

Dastricta, nameny — of Huszinkých, Lohferlaga and Mánbhum, and Pargana Dhálbhum.
The Dastrict Salaha in the District of Singhbum—ere Gazette of India, 1881,
11, 150
[As regards the District of Lohfridga are first note supro]
[As regards the District of Lohfridga are first note supro]
[As regards the District of Lohfridga are first note supro]
[1872], as amonded by the Santhal Pargana Settlement Regulation, 1899 [III of 1829), Ben Code

tion, revocation, revival, interpretation and probate of the wills of Hindus, Jamas, Sikhs and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay. It is hereby enacted as follows -

This Act may be called the Hindu Wills Act, 1870.

 The following portions of the Indian Succession Act, 1865. Certain por namely .-

sections 46, 48, 49, 50, 51, 55 and 57 to 77 (both inclusive), sections 82, 83, 85, 88 to 103 (both inclusive), sections 106 to 177 (both inclusive), 2 [and section 187,]

shall, notwithstanding anything contained in section 331 of the said Act.

apply-(a) to all wills and codicils made by any Hindu, Jaina, Sikh or Txtent of Buddhist, on or after the first day of September, 1870, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature

at Madras and Bombay, and (b) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situated within those territories or limits

3 Provided that marriage shall not revoke any such will or codicil And that nothing herein contained shall authorize a testator to bequeath property which he could not have alienated inter vivos, or to deprive any persons of any right of maintenance of which, but for section 2 of this Act, he could not deprive them by will

And that nothing herein contained shall affect any law of adoption or intestate succession

And that nothing herein contained shall authorize any Hindu, Jaina. Sikh or Buddhist to create in property any interest which he could not have created before the first day of September, 1870

4. On and from that day, section 2 of Bengal Regulation V of 1799 4 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court V of 1799. in the territories subject to the Lieutenant-Governor of Bengal

5. Nothing contained in this Act shall affect the rights, duties and Saving of

Short title

t one of Act X of 1865 extended to wills of H ndus Jans, Sikhsend Buddhists

Provisos

Partial repea of Bongal Pegulation section 2

¹ General Acts Vol I The words and figures and section 187 were substituted for the portion of section 2 commencing with the words and figures section 179 and ending with the words 'administrator with the will annexed by section 154 (a) of the Probate and Administration Act 1891 (V of 1881) General Acts Vol 111

^{**}The thrift clause (which was as follows: And that nothing berein contained shall vest in the executor or administrator with the will annexed of a deceased person any property which such person could not have alienated infer visc. I was repealed by s. 154 (b) of the Probate and Idministrator Act. 1881 (V of 1881) General Acts, Vol. III **Ben Code**

rights of Administrator General Interpretaprivileges of the Administrators General of Bengal, Madras and Bombay, respectively, 1

6. In this Act and in the said sections . * 2 of the Indian Succes- X sion Act,' all words defined in section 3 of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section 3 has attached to such words respectively:

And in applying sections 62, 63, 92, 96, 98, 99, 100, 101, 102, ' [and 103] of the said Succession Act, to wills and codicils made under this Act, the words "son," "sons," "child" and "children" shall be deemed to include an adopted child, and the word "grand-children" shall be deemed to include the children, whether adopted or naturalborn, of a child whether adopted or natural-born; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son. 5

¹ See the Administrator General's Act 1874 (II of 1874) a ranted as few "The words ' and Parts were it; sted by the Regesting and Anendry Act, 1891 (X11 of 1691)

General Acts, Vol I

The words and figures " and 103 were substituted for the words and figures " 103
and 182 by a 154 (c) of the Probite and Administration Act, 1881 (V of 1641), General

Acts, Vol. 111

The last clause of section 6 as to the making of grants of letters of a la mistration Act. 1831 (v. of 1831)

ACT No XXVII of 1870 1

[25th November 1870]

An Act to amend the Indian Penal Code 2

For the purpose of amending the Indian Penal Code, It is hereby Preamble enacted as follows -

1 For section 34 of the said Code, the following section shall be Section 34 - beintriadus

"34 When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act several per in the same manner as if it were done by him alone

act done by sons in tur therance of common intention Sect on 40

Liabil ty for

2 For section 40 of the said Code the following section shall be sub stituted -'40 Except in the chapter and sections mentioned in clauses 2 and

' Offence "

3 of this section, the word 'offence' denotes a thing made punishable by this Code "In Chapter IV and in the following sections, namely, sections 64.3 65, 3 66, 3 67, 4 71, 3 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203,

1 Short title The Indian Penal Code Amendment Act 1870 See the Indian Short Titles Act 1897 (YIV of 1897) General Acts Vol 11 1000 D

1876, Pt I, p 505

This figure was inserted in the second clause of section 40 of the Indian Penal Code by the Indian Criminal Law Amendment Act, 1835 (X of 1835), s 21 (1), printed, General Act, Vol. III

The Districts of Hazaribagh, Lohardaga and Manbhum. and Pargana Dhalbhum and the Kolhán in the District of Singbhum | The District of Lohárdaga included at this time the present District of Palamau, which was sepa rated in 1894, the District of Lohardaga is now called the Ranch District see Cal. Gazette 1899, Pt I, p 44] See Gazette of India, 1881, Pt I, p 504 The North Western Provinces I araı

Ditto General Acts Vol J * These figures were inserted in the second clause of section 40 of the Indian Penal Code by the Indian Penal Code Amendment Act, 1832 (VIII of 1882), \$ 1, printed. General Acts, Vol III

211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word 'offence' denotes a thing punishable under this Code, or under any special or local law as hereinafter defined

"And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word 'offence' has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine"

Section 56

- 3 Section 56 of the said Code shall be read as if the following proviso were added thereto ---
- Provise at the sentence for term exceeding ten years, but not for life, where a European or American oftender would, but term exceeding ten years, but not for life, he shall be liable to be but not for life.

 "Provided that, where a European or American oftender would, but for such according ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life."
 - 4 After section 121 of the said Code the following section shall be inserted \hdots

Conspiracy to commit offences pun ishable by section 121

- "121A Whoever within or without British India conspires to commit any of the offences punishable by section 121 or to deprive the Queen of the Sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with impresonment of either description which may extend to ten years
- "Explanation —To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof"
 - 5 [Rep by the Repealing and Amending Act, 1903 (I of 1903)]

Addit on to section 131

- 6 Section 131 of the said Code shall be read as if the following Explanation were added thereto
- "Explanation —In this section the words 'officer' and 'soldier' include any person subject to the Articles of War for the better government of Her Majesty's Almy, or to the Articles of War' contained in Act No V of 1869" 2
- 7. Sections 194 and 195 [Rep by the Repealing and Amending Act, 1891 (XII of 1891)]
- Sections 222 and 223 of the said Code shall be construed as if,
 after the word "offence," the following words were inserted (that is to
 say), "or lawfully committed to custody",

and section 222 of the said Code shall be construed as if the following words were added thereto (that is to say), "or if the person was lawfully committed to custody "

- 9. Section 225A [Rep by the Repealing and Amending Act, 1891 (XII of 1891)]
- 10. After section 294, and before Chapter XV of the Indian Penal Code, the following section shall be inserted -
 - "294A Whoever keeps any office or place for the purpose of draw- keeping loting any lottery not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both

"And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees "

- 11 Section 307 of the said Code shall be read as if the following clause were added thereto -
- "When any person offending under this section is under sentence of Attempts by transportation for life, he may, if hurt is caused, be punished with death "
- 12 After section 304 of the same Code, the following section shall be inserted —
- "304A Whoever causes the death of any person by doing any rash Causing death or negligent act not amounting to culpable homicide shall be punished by negligence with imprisonment of either description for a term which may extend to two years, or with fine, or with both "

13 The following chapters of the same Code, namely, IV (General application Exceptions), V (Of Abetment) and XXIII (Of Attempts to commit chapters of Offences) shall apply to offences punishable under the said sections 121A, Penal Code 294A and 304A, and the said Chapters IV and V shall apply to offences nunishable under 1 [sections 124A and 225A and 225B]

- 14 Order of Local Government necessary to prosecution under section 121A, 124A or 294A [Rep by the Repealing and Amending Act, 1891 (XII of 1891) 7
- 15 Nothing contained in this Act shall be taken to affect any of the Saving of provisions of any special or local law

spec al and local laws.

¹ The words and figures section 124% and △5% and 225B were substituted for the words and figures sud sections 124% and 225% by the second schedule to the Repealing and Amending Act, 1281 (All of 1991), General icts, 40. IY

[1870 : Act XXVII. [1871 : Act I.

16. Addition to Code of Criminal Procedure. [Rep. by Act X of 1872.]

17. Repeal of enactments. [Rep. by Act X of 1872.]

SCHEDULE I.

ADDITION TO SCHEDULE TO CODE OF CRIMINAL PROCEDURE.

[Repealed by Act X of 1872.]

SCHEDULE II.

ENACTMENTS REPEALED.

[Repealed by Act X of 1872.]

THE CATTLE-TRESPASS ACT, 1871.

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(Chapter I - Preliminary)

ACT No T or 1871 1

[13th January 1871]

An Act to consolidate and amend the law relating to Trespasses by Cattle

WHEREAS it is expedient to consolidate and amend the law relating Preamble to trespasses by cattle, It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

- 21 (1) This Act may be called the Cattle trespass Act, 1871, and
- (2) It extends to the whole of British India, sexcept the presidency towns and such local areas as the Local Government, by notification in
- the official Gazette may from time to time exclude from its operation 4
 (3) The Local Government may at any time, by notification in the
 official Gazette, cancel or vary a notification under sub section (2)
 - 2 The Acts mentioned in the schedule hereto annexed are repealed

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

Repeal of Acts References to repealed Acts.

Title and

extent

For the Statement of Objects and Reasons see Gazette of Ind a 1870 Pt V p 310 for Proceedings in Council see 16 d Supplement pp 1150 1200 1290 and

The D fit has he did not be here

It has been extended by notification und rs 16 of the Burms Laws Act 1828 (XIII of 1839) to the Civil Station of La hio in the State of North Heavis Burma Gazette 1833 Pt 1 p 534

It has been extended to the Civil Station of Taunggi in the State of Yawng Hwe

sb, 1895 Pt I p 550
For notification i sucd by the Government of the United Provinces under this power set U P R & 0

(Chapter I - Preliminary Chapter II .- Pounds and Pound-keepers)

All pounds established, pound-keepers appointed and villages determined under Act No III of 1857 1 (relating to trespasses by cattle) shall be deemed to be respectively established, appointed and determined under this Act.

Interpretation clause 3. In this Act,-

officer of police includes also village-watchmen, and

cattle includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids, "fand

3 local authority means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area, and

local fund means any fund under the control or management of a local authority.]

CHAPTER II.

POUNDS AND POUND-REEPERS.

Estal lish munt of pounds.

Centrol of nounds.

charge for feeding impounded cattle

Appointment

of pound-Leepers

Liofferio

pound keep ers in Madras

Rates of

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government, from time to time directs 4

The village by which every pound is to be used shall be determined by the Magistrate of the District 5

5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

6. The Magistrate of the District shall also appoint for each pound a pound-keeper:

Provided that, in the Presidency of Fort St George, the heads of villages and, in the Presidency of Bombay, the police patils, or (where there are no police patils) the heads of villages shall be ex officio the and Bombay. keepers of village pounds.

Act III of 1857 is repealed by this Act-see Schedule

These words were added to s 3 by the Cattle trespass Act (1871) Amendment Act,

(Chapter II - Pounds and Pound Leepers Clapter III - Impounding Cattle)

Every pound Leeper appointed by the Magistrate of the District may Suspens on be suspended or removed by such Magistrate or removal of pound

Any pound keeper may hold simultaneously any other office under Po d Government

Leepers keepers may hold other

ofhees Every pound keeper shall be deemed a public servant within the Po ad meaning of the Indian Penal Code 1

keepers to he public servants "1

Duties of Pound keepers

7 Every pound keeper shall keep such registers and furnish such To keep re returns as the Local Government from time to time directs 2

gisters and furnish returns

8 When cattle are brought to a pound, the pound keeper shall enter To reg ster se zures. in his register,-

(a) the number and description of the animals.

(b) the day and hour on and at which they were so brought.

(c) the name and residence of the seizer, and

(d) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry

9 The pound keeper shall take charge of feed and water the cattle lotake charge of and until they are disposed of as hereinafter directed feed cattle.

CHAPTER III

IMPOUNDING CATTLE

10 The cultivator or occupier of any land,

damag ng

or any person who has advanced cash for the cultivation of the crop land or produce on any land

or the vendee or mortgagee of such crop or produce or any part thereof

may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon and Isend them or cause them to be sent within twenty four hours] to the pound established for the village in which the land is situate

General Acts Vol I

For not fical on prescribing registers and returns in Burma see Burma Gazette
1902, Pt. I p 794

These words in 8 10 were substituted for the words taken w thout unnecessary delay by the Lattle trespass Act [1871] Amendment Act 1891 (I of 1891) s 3 General Acts Vol IV VOL. II.

(Chapter III .- Impounding Cattle.)

Police to aid seizures.

All officers of police shall, when required, aid in preventing (a) resistance to such seizures, and (b) rescues from persons making such soigures.

Cattle damaging public roads, cands and embankments,

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like and officers of police, may seize or cause to be seized any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments or found straying thereon,

and shall 2[send them or cause them to be sent within twenty-four hours] to the nearest pound.

Fines for extile impounded,

12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine according to the following scale 3:—

Elephant two rupces.
Camel or buffalo thorse, mare, gelding, pony, colt, filly, mule, bull,
bullock, cow or heifer four ,
Calf, ass or pig two ,,
Ram, ewe, sheep, lamb, goat or kid one anna.

⁴ Provided that, when it appears to the Local Government from the report of a Magistrate of a District, or on the representation of a local authority that, in any local area subject to the jurisdiction or control of such Magistrate or authority, cattle are habitually allowed to trespass on land and damage crops or other produce thereon, the Local Government may, by notification in the official Gazette, direct that, for every head of cattle of any kind specified therein which may be seized within such local area and impounded as aforesaid, the pound-keeper shall levy such fine, not exceeding double the fine mentioned in the foregoing scale, as may be prescribed in the notification.⁵

- 141a -------- 5 ---- D - 41 ---

As to the application of a 11 to forests, see the Indian Forest Act, 1878 (VII of 1878), a 69, Gneeral, Acts, Vol II, the Burna Forest Act, 1902 (Bir Act 1 V of 1902), a 49; the Asam Forest Regulation, 1891 (VII of 1891), a 56, E B and A Codo; to a 49; the Asam Forest Regulation, 1891 (VII of 1891), a 125 (4), General Acts, Vol Vol or the words "take them without unnecessary 11 Amendment Act, 1891 (I of 1891), a 4,

iniway, see too indian maliways Act, 1000
Acts, Yol IV.

first paragraph of this section]

(Chapter III - Impounding Cattle Chapter IV .- Delivery or Sale of Cattle)

All fines so levied shall be sent to the Magistrate of the District

through such officer as the Local Government from time to time directs 1 A list of the fines and of the rates of charge for feeding and watering List of fines

cattle shall be stuck up in a conspicuous place on or near to every pound. and charges ²[The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under the proviso to the

for feeding

CHAPTER IV.

DELIVERY OR SALE OF CATTLE

13. If the owner of the impounded cattle or his agent appear and Procedure claim the cattle, the pound-keeper shall deliver them to him on payment claims the of the fines and charges incurred in respect of such cattle cattle and

The owner or his agent, on taking back the cattle, shall sign a receipt and charges. for them in the register kept by the pound-keeper

14. If the cattle be not claimed within seven days from the date of Procedure if their being impounded, the pound-keeper shall report the fact to the claimed officer in charge of the nearest police-station, or to such other officer as within a the Magistrate of the District appoints in this behalf

cattle be not

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating-

- (a) the number and description of the cattle.
- (b) the place where they were seized,
- (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as the Magistrate of the District by general or special order from time to time directs

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit

15. If the owner or his agent appear and refuse to pay the said fines Delivery to and expenses, on the ground that the seizure was illegal and that the disputing

¹ For notification issued under this clause for Burma, see Burma Gazette, 1902, Pt. I.

p 37 This paragraph was added to s 12 by the Cattle trespass Act (1871) Amendment Act, 1891 (f of 1891), s 5 (2), General Acts, vol 1\ VOL, II. st 2

(Chapter IV -Delivery or Sale of Cattle)

legality of se zore but mak ng depos t

owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him

Procedure
when owner
refuces or
o ts to pay
the fines and

16 If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer at such place and time, and subject to such conditions, as are referred to in section 14

Deduction of fines and expenses.

The fines leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale

Delivery of unsold cattre and balance of proceeds. The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

(a) the number of cattle seized.

(b) the time during which they have been impounded.

(c) the amount of fines and charges incurred,

(d) the number of cattle sold,

(e) the proceeds of sale, and

(f) the manner in which those proceeds have been disposed of

Receipt,

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase money (if any) paid to him according to such account

D sposal of fines expenses and surpl s proceeds of sales. 17 The officer by whom the sale was made shall send to the Magis trate of the District the fines so deducted The charges for feeding and watering deducted under section 16 shall

be paid over to the pound keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be sent to

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and, if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided

Application of fines and unclaimed proceeds of sale

18 Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle shall be paid—

(a) the salaries allowed to pound keepers under the orders of the Local Government,

(b) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act.

District

(Chapter IV - Delivery or Sale of Cattle Chapter V - Complaints of Illegal Seizure or Detention)

and the surplus 1 (if any) shall be applied under orders of the Local Government to the construction and repair of roads and bridges and to other nursoses of public utility

19 No officer of police or other officer or pound keeper appointed Officers and under the provisions herein contained shall, directly or indirectly, pur- pound keep chase any cattle at a sale under this Act

purchase cattle at sales under

No pound keeper shall release or deliver any impounded cattle other wise than in accordance with the former part of this Chapter, unless such release or delivery is ordered by a Magistrate or Civil Court

Pound Leepers when not to release paperanded cattle.

CHAPTER V 2

COMPLAINTS OF TILEGAL SCIZURE OR DETENTION

20 Any person whose cattle have been seized under this 1ct, or, Power to having been so seized, have been detained in contravention of this Act, plants, may, at any time within ten days from the date of the seizure, make a complaint 3 to the Magistrate of the District or any Magistrate authoriz ed to receive and try charges without reference by the Magistrate of the

either in writing or verbal If it be verbal, the substance of it shall be taken down in writing by the Magistrate If the Magistrate, on examining the complainant or his agent, sees

21 The complaint shall be made by the complainant in person, or by Procedure on an agent personally acquainted with the circumstances It may be complaint,

reason to believe the complaint to be well founded he shall summon the person complained against and make an enquiry into the case

22 If the seizure or detention be adjudged illegal, the Magistrate Compensation shall award to the complainant, for the loss caused by the seizure or de for llegal tention, reasonable compensation not exceeding one hundred rupees to detention be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in pro curing the release of the cattle

(1) (m) (beneral Acts Vol V

As to the crediting of this surplus to local funds see s. 31 infra

"This Chipter was sub! tuited for the or "mil Ch \ by the Cattle tre pass Act (1871)

Amendment \(\text{t} \) Edit [181] is 6 General Acts \(\text{t} \) Old the Code of Criminal Procedure 1293

Act \(\text{t} \) Old 1809) includes any act is respect to d which a compliant may be made under this

Offences und r th s section may be tried in a summary way, see Act V of 1898 . 260

166

Cattle-trespass

[1871: Act I.

(Chapter V - Complaints of Illegal Seizure or Detention Chapter VI-Penalties \

Release of cattle.

compensa

tion.

and, if the cattle have not been released, the Magistrate shall, be sides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle Recovery of

23 The compensation, fines and expenses mentioned in section 22 may be recovered as if they were fines imposed by the Magistrate 1

CHAPTER VI

PENALTIES

24 Whoever forcibly opposes the seizure of cattle liable to be seized under this Act, and whoever rescues the same after seizure, either from a pound or

from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act, shall, on conviction before a Magistrate, be punished with imprison

ment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both

25 Any fine imposed a [under the next following section or] for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence or were only in his charge when the trespass was committed

26 Any owner or keeper of pigs who, through neglect or otherwise. damages or causes or permits to be damaged any land or any crop or pro duce of land, or any public road ' by allowing such pigs to trespass thereon shall on conviction before a Magistrate, be punished with fine not exceeding ten rupees

The Local Government, by notification in the official Gazette may from time to time, with respect to any local area specified in the notifi cation, direct that the foregoing portion of this section shall be read

Penalty for forcibly op posing the reizure of cattle or

rescu ng the same

Recovery of penalty for mischief com mitted by caus ng cattle to trespass

Penalty for damage caused to land or crops or public roads by pigs.

1871: Act 17

(Chanter VI -Penaltses Chapter VII -Susts for Compensation)

as if it had reference to cattle generally, or to cattle of a kind described 1 in the notification, instead of to pigs only, or as if the words "fifty tupees" were substituted for the words "ten rupees," or as if there were both such reference and such substitution]

²[The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under this section 1

27 Any pound keeper releasing or purchasing or delivering cattle Penalty on contrary to the provisions of section 19, or omitting to provide any im- fading to pounded cattle with sufficient food and water, or failing to perform any perform of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees

Such fines may be recovered by deductions from the pound keeper's salary

28 All fines recovered under section 25, section 26 or section 27 Application of fines may be appropriated in whole or in part as compensation for loss or recovered damage proved to the satisfaction of the convicting Magistrate

25, 26 or 27

CHAPTER VII

SUCTS FOR COMPENSATION

29. Nothing herein contained prohibits any person whose crops or Signify out other produce of land have been damaged by trespass of cattle from forcomp. suing for compensation in any competent Court

astion.

30 Any compensation paid to such person under this Act by order Set-off of the convicting Magistrate shall be set off and deducted from any sum claimed by or awarded to him as compensation in such suit

For notification-(1) As to elephants and buffaloes issued by the Chief Commissioner Assam ecc there referred to

(Chapter VIII - Supplemental Schedule)

CHAPTER VIII 1

SUPPLEMENTAL.

31 The Local Government may, from time to time, by notification in the official Gasette,—

- (a) transfer to any local authority 2 within any part of the territories under its administration in which this Act is in oper ation, all or any of the functions of the Local Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority, or 3
- (b) direct that the whole or any part of the surplus accruing in any district under section 18 of this Act shall be placed to the credit of such local fund or funds 2 as may be formed for any local area or local areas comprised in that district,4

and may, from time to time, by notification in the official Gazette, cancel or vary any notification under this section

SCHEDULE

(See section 2)

Number and year	Title of Act	
III of 1857 V of 1860 X XII of 1861	An Act relating to trespesses by cattle An Act to amend Act III of 1857 (relating to trespesses by cattle) An Act to amend Act III of 1857 (relating to trespesses by cattle)	

Ch VIII was added by the Cattle trespass Act (1871) Amendment Act 1891 (I of 1891) s 9 General Acts Vol IV

141

1896

Pt. I p. 501
(C) Government of Bengal for such portions of Calcutta as defined in the Calcutta
Municipal Act 1899 which are not included in the Presidency town, see
Gazette 1901 Pt. 1-B dated 6th February 1901
(d) Chief Commissioner, North West Frontier Province see Gazette of India, 1904,
Pt. II, p. 1172

I ower for Local Government to transfer certain functions to local authority and direct cred t of surplus receipls to

local fund

1871: Act V.] 1871 : Act XXIII.7 Prisoners. Pensions.

ACT No V of 1871.

15. Any warrant of commitment under Regulation III of 18182 of Warrants the Bengal Code (for the Confinement of State Prisoners), Regula- lations for tion II of 1819 of the Madras Code (for the Confinement of State Pri- confinement soners), and Regulation XXV of 1827 of the Bombay Code (for the soners Confinement of State Prisoners, and for the Attachment of the Lands of Chieftains and others for Reasons of State), may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No XXXIV of 1850 5 (for the better custody of State Prisoners), and Act No III of 1858 8 (to amend the Law relating to the arrest and detention of State Prisoners)

ACT No XXIII of 1871 6

[8th August 1871]

An Act to consolidate and amend the law relating to Pensions and Grants by Government of money or land-revenue.

WHEREAS it is expedient to consolidate and amend the law relating Preamile.

The whole of this Act except section 15 was repealed by the Prisoners Act, 1900 (III of 1900) General Acts, Vol V

2 Short title, The Bengal State Prisoners Regulation, 1818, Ben Code * Mad Code

* Bom Lode

Short titles, The State Prisoners Act, 1850, and The State Prisoners Act, 1858, respectively, General Acts Vol 1 * For the Statement of Objects and Reasons see Gazette of India 1871, Pt V p 141,

* for Proceedings in Council, see 161d, 1871, Supplement, pp 314, 401, 683

This Act has been declared in force in-

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1893 (NIII of 1893), s 4 (1) and Sch I, Bur Code,

the Arakan Hill District (evcept as 1 and 2 and the Schedule) by the Arakan Hill District Laws Regulation 1374 (I. of 1874) a 3 total British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890).

It is included in the Schedule to the Santhal Parganas Settlement Pegulation, 1872 (III of 1872) as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben Code

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act. 1874 (NIV

The Act applies to certain allowances known as the Oudh Wasikas as if they were pensions of the classes referred to in sections 4 and 11 of the Act. See the Oudh Wasikas Act, 1886 (XXI of 1886), s 2.

(I-Preliminary II-Rights to Pensions)

to pensions and grants by Government of money or land revenue, It is hereby enacted as follows —

I -Preliminary

Short ttle, Extent of Act. Commence

1 This Act may be called the Pensions Act, 1871

It extends to the whole of British India,

And it shall come into force on the date of the passing thereof

ment. Enact rents repealed.

2 The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said sche dule

Saving of rules But all rules in regard to the award and payment of pensions or grants of money or land revenue, and the identification of the persons entitled to receive them, made under any such enactment, shall be deem ed to have been made under this Act so far as they are consistent therewith

Interpretation section. 3 In this Act, the expression "grant of money or land revenue" includes anything payable on the part of Government in respect of any right, privilege, perquisite or office

11 —Rights to Pensions

Far of suits relating to pens ons ²4. Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue con ferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and what ever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted

Cls me to be made to Col lector or other authors szed officer

5 Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the Local Government, and such Collector, Deputy Commissioner or other officer shall dispose of such claim in accordance with such rules 3 as the Chief Reve

The words but not so as to affect any suit in respect of a pension or grant of

I by this section

(II - Rights to Pensions. III - Mode of Payment)

me-authority may, subject to the general control of the Local Govern-

gent, from time to time prescribe in this behalf. 8. A Civil Court, otherwise competent to try the same, shall take Civil Court

ognizance of any such claim upon receiving a certificate from such Colector, Deputy Commissioner or other officer authorized 2 in that behalf zance of such hat the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly

7. Nothing in sections 4 and 6 applies to-

Pensions for lands held in nernetuity

(1) any mam of the class referred to in section 1 of Madras Act under grants No IV of 1862.2

(2) pensions heretofore granted by Government in the territories respectively subject to the Lieutenant-Governors of Bengal and the North Western Provinces, either wholly or in part as an indemnity for loss sustained by the resumption by a Native Government of lands held under sanads purporting to confer a right in perpetuity Such pensions shall not be liable to resumption on the death of the recipient, but every such pension shall be capable of alienation and descent, and may be sued for and recovered in the same manner as any other property

III -Mode of Payment

8. All pensions or grants by Government of money or land revenue Payment to shall be paid by the Collector or the Deputy Commissioner or other and Collector thorized officer, subject to such rules 1 as may, from time to time, Le or other prescribed by the Chief Controlling Revenue-authority

9. Nothing in sections 4 and 8 shall affect the right of a grantee of Saving of land-revenue, whose claim to such grant is admitted by Government, to rights of grantees of recover such revenue from the persons liable to pay the same under any land revenue law for the time being in force for the recovery of the rent of land

10. The Local Government may, with the consent of the holder, Commutation

Pensions

[1871 : Act XXIII.

(Schedule)

SCHEDULE-continued.

Number and year	Title or subject	Extent of repeal.
	I -Bengal Regulations-confined	d.
XI of 1813 .	A Regulation for modifying some of the Rules before established respecting the Payment of Pensions and for preventing the abuses committed in the receipt of Pensions	The whole.
VI of 1817 .	A Regulat on to explain the Purport and Intent of the Provision contained in Sec- tion II, Regulation XXIV, 1803	The whole,
	II -Madras Regulations.	
1 of 1803 .	A Regulation for defining the Duties of the Board of Revenue, and for determin- ing the Extent of the Powers vested in the Board of Revenue.	Section 43
II of 1803 .	A Regulation for describing and determining the Conduct to be observed by Collectors in certain cases.	Section 30
IV of 1831	A Regulation for better securing to the Grantees personal or hereditary Grants of Money or of Land Revenue, conferred by the Government in consideration of Services rendered to the State or in heu of resumed Offices or Privileges or of Zamindáris or Pileyans is forfested or held under Attachment or Management by the Officers of Government, or as Yaumias or Pensions.	The whole.
	III -BONBAY REGULATION.	
XXIX of 1827	A Regulation for bringing under the opera- tion of the Regulations the Bombay Terri tories in the Dekkhan and Khandeah.	Section 6, clauses and 3
	iv.—Acts.	
XXXI of 1836	Government Grants	The whole.
XXIII of 1838	. Exemption of Grants from attachment .	The lole.
VI of 1849 .	An Act for securing Military and Naval Pensions and Superson atton Allows	TI

(II - Rights to Pensions III - Mode of Payment)

nue authority may, subject to the general control of the Local Government, from time to time prescribe in this behalf

8 A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other officer authorized 1 in that behalf zance of such that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly

Civil Court empowered to take cogn: claims.

7. Nothing in sections 4 and 6 applies to-

(1) any mam of the class referred to m section 1 of Madras Act under grants No. IV of 1862.2

Pensions for lands held in perpetuity

(2) pensions heretofore granted by Government in the territories respectively subject to the Lieutenant Governors of Bengal and the North Western Provinces either wholly or in part as an indemnity for loss sustained by the resumption by a Native Government of lands held under sanads purporting to confer a right in perpetuity Such pensions shall not be liable to resumption on the death of the recipient, but every such pension shall be capable of alienation and descent, and may be sued for and recovered in the same manner as any other property

III -Mode of Payment

8 All pensions or grants by Government of money or land revenue Payment to shall be paid by the Collector or the Deputy Commissioner or other in Collector thorized officer, subject to such rules as may from time to time, e or other prescribed by the Chief Controlling Revenue authority 9 Nothing in sections 4 and 8 shall affect the right of a grantee of Saving of

authorized of cer

land revenue, whose claim to such grant is admitted by Government, to grantees of recover such revenue from the persons liable to pay the same under any land revenue. law for the time being in force for the recovery of the rent of land

10. The Local Government may, with the consent of the holder, Communication

of pensions.

powers conferred by this

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l Regulation IV of 1831 *sioner and converted into The classes so described ue however denominated

(I - Preliminary II - Rights to Pensions)

to pensions and grants by Government of money or land revenue, It is hereby enacted as follows —

I -Preliminary

Short title, Extent of Act.

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It extends to the whole of British India.

And it shall come into force on the date of the passing thereof

ment.
Enactirents
repealed.

2 The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said sche dule

Saving of rules But all rules in regard to the award and payment of pensions or grants of money or land revenue, and the identification of the persons entitled to receive them, made under any such enactment, shall be deemed to have been made under this Act so far as they are consistent therewith

Interpretation section, 3. In this Act, the expression "grant of money or land revenue" includes anything payable on the part of Government in respect of any right, privilege, perquisite or office

II -Rights to Pensions

Far of suits relating to pens ons ² 4. Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted

Cla ms to be made to Col lector or other authors szed officer 5 Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the Local Government, and such Collector, Deputy Commissioner or other officer shall dispose of such claim in accordance with such rules 3 as the Chief Reve-

The words "but not so as to affect any suit in respect of a pension or grant of

s conferred by this section

(II - Rights to Pensions III - Mode of Payment)

age authority may, subject to the general control of the Local Govern

nent, from time to time prescribe in this behalf

6 A Civil Court otherwise competent to try the same shall take C vil Court cognizance of any such claim upon receiving a certificate from such Col lector, Deputy Commissioner or other officer authorized in that behalf zance of such that the case may be so tried but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly

empowered to take cogni

7. Nothing in sections 4 and 6 applies to-

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Pens ons for lands held in perpetuity

(2) pensions heretofore granted by Government in the territories respectively subject to the Lieutenant Governors of Bengal and the North Western Provinces either wholly or in part as an indemnity for loss sustained by the resumption by a Native Government of lands held under sanads purporting to confer a right in perpetuity Such pensions shall not be liable to resumption on the death of the recipient but every such pension shall be capable of alienation and de scent and may be sued for and recovered in the same man ner as any other property

III -Mode of Payment

8 All pensions or grants by Government of money or land revenue Payment to shall be paid by the Collector or the Deputy Commissioner or other un thorized officer, subject to such rules 1 as may from time to time 1, or other prescribed by the Chief Controlling Revenue authority

9 Nothing in sections 4 and 8 shall affect the right of a grantee of Saving of

land revenue whose claim to such grant is admitted by Government to rights of recover such revenue from the persons liable to pay the same under any land revenue.

law for the time being in force for the recovery of the rent of land

10 The Local Government may with the consent of the holder, Commutation

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of pensions.

powers conferred by this

Regulation IV of 1831 oner and converted into The cla ses so de cribed ue however denominated ch having been made hy

[1871 : Act XXIII.

(IV -- Miscellaneous)

order the whole or any part of his pension or grant of money or landrevenue to be commuted for a lump sum on such terms as may seem fit

IV -Miscellaneous.

Exemption of pens on from attachment. 11 No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance,

and no money due or to become due on account of any such pension or allowance.

shall be liable to seizure, attachment or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court

Ass gnments, etc., in abti cipation of pens on, to be yord.

12 All assignments, agreements, orders, sales and securities of every kind made by the person entitled to any pension, pay or allowance mentioned in section 11, in respect of any money not payable at or before the making thereof, on account of any such pension, pay or allowance, or for giving or assigning any future interest therein, are null and yould

Reward to

13 Whoever proves to the satisfaction of the Local Government that any pension is fraudulently or unduly received by the person enjoying the benefit thereof shall be entitled to a reward equivalent to the amount of such pension for the veried of six months.

Power to make rules 14 The Chief Controlling Revenue authority may, with the consent of the Local Government, from time to time make rules 2 consistent with this Act respecting all or any of the following matters --

- (1) the place and times at which, and the person to whom, any pension shall be paid,
- (2) mournes into the identity of clamants,
- (3) records to be kept on the subject of pensions;
- (4) transmission of such records,
- (b) correction of such records,

Bombay see Bom R & O , Madras see Mad R & O

Madras

see Mad R & O

United Provinces of Agra and Oudh see North Western Provinces and Oudh List
of Local Rules and Orders, Ed 1884,

P 45, Central Provinces . . see C P R. & O

¹See, too s 60 cl (g) of the Code of Civil Procedure 1908 (Act V of 1908) General Acts Vol VI See also last paragraph of Jootnote under section 1. supra *For notifications making rules under the powers conferred by this section in—

Extent of repeal.

Number and year.

Pensions.

(Schedule.)

- (6) delivery of certificates to pensioners;
- (7) registers of such certificates;
- (8) reference to the Civil Court, under section 6, of persons claiming a right of succession to, or participation in, pensions or grants of money or land-revenue payable by Government:

and generally for the guidance of officers under this Act.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

SCHEDULE.

(See section 2)

I.—Bengal Regulations.					
XXIV of 1793.	•	A Regulation for re enseting, with Modufications, the Rules passed by the Governor General in Council on the 10th June 1791, for determining the Continuance or Discontinuance of the Pensions Sectotive and by the Proprietors and Farmers of Land, but included in the Jama or Revenue payable to Government at the Doceanual Settlement, and also of the Pensions, heretofore paid from the Săir, abe lished.	The whole.		
XXXIV of 1795		A Regulation for re enacting, with Moduli- cations, the Rules respecting the Pensions payable from the Government and Mulka Treasuries in the Province of Benares	The whole		
XXIV of 1803 .	•	A Regulation for trying the Validity of	The whole		
		pany.			
I of 1804		A Regulation for the better Management of the invalid Jágírdár Establishments and of the Invalid Pension Establishments.	Sections 23 to 26 melu- sive		
XXII of 1806 .	٠	A Regulation for modifying the Rules hitherto observed in the admission_and Payment of Claims to Pensions.	The whole.		
II of 1811	٠	A Regulation for amending the existing Rules for the support of Invalid Native Commissioned and Non Commissioned Officers.	The whole-		

(Schedule.)

SCHEDULE-continued.

Number and year.	Title or subject.	Extent of repeal.				
I.—Bengal Regulations—continued.						
XI of 1813	A Regulation for modifying some of the Rules before established respecting the Payment of Pensions and for preventing the abuses committed in the receipt of Pensions.	The whole,				
VI of 1817	A Regulation to explain the Purport and Intent of the Provision contained in Sec- tion II, Regulation XXIV, 1803	The whole.				
II Madras Regulations.						
I of 1803	A Regulation for defining the Duties of the Board of Revenue, and for determin- ng the Extent of the Powers vested in the Board of Revenue.	Section 43.				
II of 1803	A Regulation for describing and determining the Conduct to be observed by Collectors in certain cases.	Section 30.				
IV of 1831 .	A Regulation for better securing to the Grantees personal or hereditary Grants of Money or of Land Revenue, confered by the Government in consideration of Services rendered to the State, or in heu of resumed Offices or Privileges, or of Zamindarys, or Peluyare forfated or held under Attachment or Management by the Officers of Government, or as Yaumias or Pensions	The whole,				
III —BOMBAY REGULATION.						
XXIX of 1827 .	A Regulation for bringing under the opera- tion of the Regulations the Bombay Terri tories in the Dekkhan and Khandesh.	Section 6, clauses 2 and 3.				
IV.—Acts.						
XXXI of 1836 .	Government Grants	The whole.				
XXIII of 1838 .	Exemption of Grants from attachment .	The whole.				
VI of 1849	An Act for securing Military and Naval Pensions and Superann lation Allowances	The whole.				

THE CRIMINAL TRIBES ACT, 1871.

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 - Local extent

 1A Definition of tribe, gang and class

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- 3 Report to contain certain particulars
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- 7 Register of members of such tribes
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- 9 Penalties for failing to appear, refusing or giving false in formation
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- 28 Maintenance and education of boys whose parents cannot be found
- 29 Dirabilities of registered ennuche
- Power to require information as to registered enunch's property.
 Populty for refusing such information.
- 31 Pules for making and keeping up registers of enduchs.

ACT NO XXVII or 1871 1

[12th October, 1371.]

An Act for the Registration of Oriminal Tribes and Eunuchs.
Witter is it expedient to provide for the registration, surreillance

I for perfere . Al fingerte tat fracta gest to gotto of taken took to V. p. 400;

and control of certain criminal tribes and eunuchs; It is hereby enacted as follows ---

1. This Act may be called the Criminal Tribes Act, 1871

Short title

[Commencement] Rep Act XVI of 1874, section I and Schedule, Part I

This section and section 20 extends to the whole of British India the Local extent rest of this Act extends only to the territories under the governments of the Lieutenant Governors of [Bengal,] the 2 North Western Provinces and the Punjab respectively, and under the administration of the Chief Commissioner of Oudh 2

4 Provided that any 5 Local Government, with the previous sanction of the Governor General in Council, may, by notification in the clocal

It has been declared by notincation under a 3 of the Scheduled Districts Act 1874 (XIV of 1874) (General Acts Vol II) to be in force in the following Scheduled Districts namely ~

the Hazaribagh Ranchi Palamsu and Manbhum Districts and Pargana Dhálbhum and the Kolhan in the Singhbhum District in the Chota Nagpur Divisionsee Ben Code

It has been extended under section 5 of the same Act to Ajmer Merwara see Noti fication No 171 J , dated 19th October 1877 A1 Code and to the Tarái Parganas of the Province of Agra see Notification No 1554 dated 22nd September 1876 U P Code

It has been declared by notification under a 2 Regulation II of 1880 not to apply in the Lushai Hills see E B and A Code

1 1he word | Bengal | was added by the Criminal Tribes (Amendment) Act 1876 (VII of 1876) section 1 infra Bengal then included the districts since transferred to the Government of Eastern Bengal and Assam see Proclamation No 2832 dated the 1st September, 1905 Gen R and O

These provinces are now known as the United Provinces of Agra and Oudh and the Lieutenant Governor and Chief Commissioner is now known as the Lieutenant Governor of those Provinces see Proclamation No 995 P dated the 22nd March 1902 Gazette of India 1902 Pt I p 228 and the United Provinces (Designation) Act 1902 (VII of 1902) General Acts Vol V

* References in the North Western Frontier Province to the territories under the Covernment of the Lieutenant Covernor of the runjab are to be construed as referring to the North West Crontier Province see s 6 (1) (a) of the North West Frontier Province Law and Justice Regulation 1901 (VII of 1901) P and V W Code

* This provise was added by section 2 of the Criminal Tribes Act Amendment Act 1897 (II of 1897) General Acts Vol IV

* In the North West Frontier Province for Local Go ernment read Chief Commissioner see s 6 (1 (6) of the North West Frontier Province Law and Justice Regulation 1901 (VII of 1901) P and V W Code and in Eastern Bengal and Assam the Local Government of that Province see the Bengal and Assam Laws Act 1905 (VII of 1905) a 3 and Sch D Pt I cl I E B and 1 Code

In the North West I routier I rounce for local official Gazette read Gazette of India see \$ 6 (A) (g) of Regulation VII of 1901 and in Eastern Bengal and Assam the Fastern Bengal and Assam Gazette see the Bengal and Assam Laws Act 1905 (VII of 1905) s 3 and Sch D Pt I cl VII E B and A. Code

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(Part I - Criminal Tribes)

official Gazette, declare 1 all or any of the provisions of this Act, as amended by subsequent legislation, to be in force in the whole or any part of the territories under its government.

21A In this Act the words ' tribe," "gang" and "class" shall be deemed to include any portion or members of a tribe, gang or class.

PART I.

CRIMINAL TRIBES

- 2. If the 3 Local Government has reason to believe that any tribe, gang or class of persons is addicted to the systematic commission of nonbailable offences, it may report the case to the Governor General in Council, and may request his permission to declare such tribe, gang or class to be a criminal tribe
- 3. The report shall state the reasons why such tribe, gang or class is considered to be addicted to the systematic commission of non-ballable offences, and, as far as possible, the nature and the circumstances of the offences 11 which the members of the tribe are supposed to have been concerned, and shall describe the manner in which it is proposed that such tribe, gang or class shall earn its living when the provisions heremafter contained have been applied to it
- 4. If such tribe, gang or class has no fixed place of residence, the report shall state whether such tribe, gang or class follows any lawful occupation and whether such occupation is in the opinion of the * Local Government, the real occupation of such tribe, gang or class, or a dence and pretence for the purpose of facilitating the commission of etimes, and shall set forth the grounds on which such opinion is based; and the report shall also specify the place of residence in which much would have tribe, gang or class is to be settled under the provisions hereinnites can tained, and the arrangements which are proposed to be unde for enabling it to earn its living therein
 - 5. If, upon the consideration of any such report, the Governor General in Council is satisfied that the tribe, game or class to which it relates ought to be declared criminal, and that the means he which it is proposed that such tribe, gang or class shall rain its living are

^{&#}x27;For notification declaring Pt I of the Act to be in force in the II mil at Presidency including bind see Notification No 3556 dated 25th May, 1860 II mil ty Government Caratte 1813 Pt 1 p 863

8 I A was added by a 3 of the Criminal Tribes Act Amendment Act (II of 1837)

See footnote under a 1, supra

(Part I - Critinal Tribes)

adequate, he may authorize the 'Local Government to publish in the 2 local Gazette a 3 notification declaring that such tribe gang or class is a criminal tribe and thereupon the provisions of this Act shall become applicable to such tribe gang or class

6 No Court of Justice shall question the validity of any such Barofjurisnotification on the ground that the provisions hereinbefore contained, or any of them have not been complied with, or entertain in any form questions whatever the question whether they have been complied with, but every relating to such notification shall be conclusive proof that the provisions of this Act are applicable to the tribe gang or class specified therein

7 When the notification mentioned in section 5 has been published Register of the Local Government may direct the Magistrate of any district in members of which such tribe garg or class or any part thereof is at the time rest dent to make a register of the members of such tribe gang or class, or of any part thereof

The declaration of the 1 Local Government that any such tribe, gang or clas or any part of it is resident in any district shall be conclusive proof of such residence

8 Upon receiving such direction the said Magistrate shall publish Procedure in a notice in the place where the register is to be made, calling upon all gater the members of such tribe gang or class or of such portion thereof as is directed to be registered to appear at a time and place therein specified before such persons as he appoints and to give those persons such information as may be necessary to enable them to make the register

9 Any member of any such tribe gang or class who without law ful excuse the burthen of proving which shall lie upon him

shall fail to appear according to such notice

or who shall intentionally omit to furnish such information

or who shall furnish as true information on the subject which he Liows or has reason to believe to be false

shall be deemed guilty of an offence under the first parts of section 174 or 176 or 177 of the 'Indian Penal Code respectively as the case rias be 860

Penalties for failing to appear refu ng or g ving false inform

ation.

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See footnote un ler s 1 sup a See footnote un ler & 1 supra amily of Jat S khs in Hadiara villag Lahore Cazette 1904 It I p 819 the Dher hara's n the Lahore D strict see ib d 1907 Pt I

(Part I-Cravanal Trabes)

Charge of register Reporting desirable alterations 10 The register, when made, shall be kept by the District Superint endent of Police, who shall, from time to time, report to the said Magistrate any alterations which ought to be made therein, either by way of addition or erasure

By whom alterations to be made, \otice to persons affected, 11 Ao alteration shall be made in such register except by or by order of the said Magistra. and he shall write his initials against every such alteration. Notice shall be given of any such intended alteration, and of the time when, and place where, it is to be made, to every person affected thereby

Complai ts of entries in register 12 Any person deeming himself aggrieved by any entry made, or proposed to be made, in such register, either when the register is first made or subsequently, may complain to the said Magistrate against such entry and the Wagistrate shall retain such person's name on the register or enter it thereta or erase it therefrom, as he may see fit

Every order for the erasure of any such person's name shall state the grounds on which such person's name is erased

The Commissioner shall have power to review any order of entry, retention or erisure passed by the said Ving state on any such conplaint, either on appeal by the person registered or proposed to be registered or otherwise

cettlement of tribe in place prescribed by Local Gov ernment, Removal to other place

16 13 Any tribe, gang or class, which has been declared to be criminal, and which has no fixed place of residence, may be settled in a place of residence pre cribed by the I ocal Government

14 Arv tribe, gang or class which has been declared to be criminal, or any part thereof, may, by order of the ²I ocal Government, per removed to any other place of residence

Arrangements to be made prior to settlement or removal.

15 No tribe gang or class, shall be sattled or removed under the provision of the Act until uch arrangements is start at small with the concurrence of the Governor General in Council, consider suitable have bun made for enabling such tribe, gang or class or such part thereof as is to be so settled or removed, to earn a living in the place in or to which it is to be sattled or removed.

Itansier of re i ter of persons enimed to b removed.

16 When the removal of any persons has been ordered under this Act, the register of such persons' names shall be transferred to the District Superintendent of Police of the district to which such persons are removed and the Vagistrate of the said district and the Commissioner of the division in which it is situated still thereupon to empowered to exercise respectively the powers provided in sections 11 and 12

l actions

17 The Local Government may, with the canction of the Governor

[&]quot;In the North West Province I notince for Commercian Province Commissioner on Ac 6 Hi (F) of the North West Front et in vince Law and J time Regula to 1001 (VII of 100) P and N W Code p. 5-2 "Orthogo does it styre"

(Part I - Criminal Tribes)

General in Council, place any tribe, gang or class, which has been reformatory declared to be criminal, or any part thereof, in a reformatory settlement

117A. (1) The 2 Local Government may establish and maintain Power to reformatory settlements for children and may separate and remove from place children in refor their parents and place in such a reformatory settlement the children of matory settle the registered members of any tribe, gang or class which has been established declared to be criminal

(2) For every reformatory settlement for children established under and to ap sub section (1) a Superintendent shall be appointed by the Local Gov- them ernment

for children

(3) The Superintendent of a reformatory settlement for children shall be deemed to be the guardian, within the meaning of 3 Act No XIX of 1850 (concerning the binding of apprentices), of every child detained in such settlement, and such Superintendent may, if he shall think fit, and subject to any rules which the Local Government may make in this behalf, apprentice such child under the provisions of the aforesaid Act

Explanation -The term "children" in this section includes all

persons under the age of eighteen and above the age of four years 18. The 2 Local Government may, with the previous consent of the Power to

- Governor General in Council, make 4 rules to prescribe-(I) the form in which the register shall be made by the said Magis trate.
- (2) the mode in which the said Magistrate shall publish the notice prescribed in section 8, and the means by which the persons whom .t concerns, and the headmen, village-watchmen and landowners or occupiers of the village, in which such persons reside 5 for the agents of such landowners or occupiers], shall be informed of its publication.
 - (3) the mode in which the notice prescribed in section 11 shall be
- (4) the limits within which persons whose names are on the register shall reside.
- (5) conditions as to holding passes, under which such persons may be permitted to leave the said limits.

S 171 was added by section 4 of the Criminal Tribes Act Amendment Act (II of

(Part I - Criminal Tribes)

- (6) conditions to be inserted in any such pass as to-
 - (a) the places where the holder of the pass may go or reside,(b) the officers before whom, from time to time, he shall be bound to present himself
 - (c) and the time during which he may absent himself,
- (7) conditions as to answering at roll call or otherwise, in order to satisfy the said Magistrate or persons authorized by him, that the per sons whose names are on the register are actually present at given times within the said limits,
- (3) the inspection of the residences and villages of any such tribe, gang or class, and the prevention or removal of contrivances for enabling the residents therein to conceal stolen property, or to leave their place of residence without leave,
- (9) the terms upon which registered persons may be discharged from the operation of this Act.
 - (10) the mode in which criminal tribes shall be settled and removed,
 - (11) the control and supervision of reformatory settlements,
- (12) the works on which, and the hours during which, persons placed in a reformatory settlement shall be employed, the rates at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour, after defraying the whole or such part of the expenses of their supervision and control as to the ¹ Local Government shall seem fit.
- (13) the discipline to which persons endeavouring to escape from any such settlement, or otherwise oftending against the rules for the time being in force, shall be submitted, the periodical visitation of such settlement, and the removal from it of such persons as it shall seem expedient to remove.
 - (14) and, generally, to carry out the purposes of this Act
- ² 19 (1) Any person registered under this Act violating a rule made under clause (4), clause (5) or clause (6) of section 18 shall be punishable with rigorous imprisonment for a term which may extend, on a first conviction, to one year, on a second conviction, to two years, and on any

ted for the original section by (II of 1897)

ler section 18 shall be punished h may extend to six months or any two of those punishments of any of the said rules with the one year or with the or with

rigorous impresonment which may exist a to one year or with line or with whipping to be inflicted in the mainer prescribed by any law in force for the time being in relation to whipping or with all or any two of these punish ments.

Penalties for breach of rules.

(Part I .- Criminal Tribes)

subsequent conviction, to three years, and shall also, whether on the first or any subsequent conviction, be liable to whipping

- (2) Any person being a member of a proclaimed tribe violating a rule made under any other clause of section 18 shall be nunishable with rigorous imprisonment for a term which may extend to six months, or with fine, or with whipping, or with all or any two of those punishments, and, on any subsequent conviction for a breach of any such rule, with rigorous imprisonment for a term which may extend to one year, or with fine, or with whipping, or with all or any two of those punishments
- 19A Whoever being a member of any tribe, gang or class which Ethinged has been declared criminal and having been convicted of any of the pun shment to certain offences under the 2 Indian Penal Code specified in the schedule to this offences by Act, shall thereafter be convicted of the same or any other offence speci- members of fied in the said schedule, then he shall, in the absence of special tribe after reasons to the contrary to be mentioned in the judgment of the Court, previous be punished, on such second conviction, with rigorous imprisonment for a term of not less than seven years, and on a third conviction with trans portation for life

conviction

Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the 2 Indian 50 Penal Code or any other law

3 19B Whoever, being a registered member of any tribe, gang or Punishment class which has been declared criminal, is found in any place under such for members circumstances as to satisfy the Court that he was about to commit, or tribe found aid in the commission of, theft or robbery, or that he was waiting for under suspi an opportunity to commit theft or robbery, shall be punishable with stances rigorous imprisonment for a term which may extend to three years, and shall also be liable to fine

20 Any person registered under the provisions of this Act, who is found in any part of British India, beyond the limits so prescribed for registered his residence, without such pass as may be required by the said rules, beyond pre or in a place or at a time not permitted by the conditions of his pass, or who escapes from a reformatory settlement.

scribed

may be arrested without warrant by any police officer or villagewatchman, and taken before a Magistrate, who, on proof of the facts.

shall order him to be removed to the district in which he ought to have resided, or to the reformatory settlement from which he has escaped (as

S 19B was added by s 6 of the Criminal Tribes Act Amendment Act. 1237 (II of 1897)

^{&#}x27;S 194 was added by a 6 of the Criminal Tribes Act Amendment Act 1837 (II of 1897) Ceneral Acts Vol. IV.
*Ceneral Acts Vol. I

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(Part I - Cremenal Trates Part II - Eunuchs)

the case may be), there to be dealt with according to the rules under this Act for the time being in force

The rules for the time being in force for the transmission of prisoners shall apply to all persons removed under this section Provided that an order from the 'Local Government or from the Inspector General of Prisons shall not be necessary for the removal of such persons

Duties of village headmen villagewatchmen etc

- 21 It shall be the duty of every village headman and village watch man in a village in which any persons belonging to a tribe, class or gang which has been declared criminal reside, and of every owner or occupier of land on which any such persons reside, 2 [or of the agent of any such owner or occupier] to give the earliest information in his power at the nearest police-station of-
 - (I) the failure of any such person to appear and give information. as directed in section 8.
 - (2) the departure of any such person from such village or from such land (as the case may be)

'And it shall be the duty of every village headman and village watchman in a village, and of every owner or occupier of land. 2 for of the agent of such owner or occupier], to give the earliest information in his power at the nearest police station of the arrival at such village or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any such tribe, class or gang

Penalty for breach of such daties.

22 Any village-headman, village watchman, owner or occupier of land, "for the agent of such owner or occupier], who shall fail to comply with the requirements of section 21, shall be deemed to have committed an offence under the first part of section 176 of the 'Indian Penal Code

23 [Indemnity for past registrations and detentions] Rep Act XII of 1876, section 1, and Schedule, Part I

PART II

EUNICHS

Registers of eunuchs and hear proper ty

24 The 1 Local Government shall cause the following registers to be made and kept up by such officer as from time to time, appoints in this behalf -

(a) a register of the names and residences of all eunuchs residing

See footnote to a 1 supra

(Part II - Funuchs)

in any town or place to which the 'Local Government specially extends this part of this Act, who are reasonably suspected of kidnapping or castrating children, or of committing offences under section 377 of the 2 Indian Penal Code, or of abetting the commission of any of the said offences, and

(b) a register of the property of such of the said eunuchs as, under the provisions hereinafter contained, are required to furnish information

as to their property

The term "eunuch" shall, for the purposes of this Act, be deemed to include all persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent

Enn ich defined

25 Any person deeming himself aggreed by any entry made or proposed to be made in such register, either when the register is first made or subsequently, may complain to the said officer, who shall enter such person's name, or erase, it, or retain it, as he sees fit

Complaints of entries in register

Every order for erasure of such person's name shall state the grounds on which such person's name is erased

The 2 Commissioner shall have power to review any order passed by such officer on such complaint, either on appeal by the complainant or otherwise

26. Any eunuch so registered who appears, dressed or ornamented Penalty on like a woman, in a public street or place, or in any other place, with the equich intention of being seen from a public street or place,

registered appearing in female or who dances or plays music, or takes part in any public exhibition, clothes or dancing

in a public street or place or for hire in a private house, may be arrested without warrant, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

in bapic or for hire

27. Any cunuch so registered who has in his charge, or keeps in the Penalty on house in which he resides, or under his control, any boy who has not completed the age of sixteen years, shall be punished with imprisonment keeping boy for a term which may extend to two years, or with fine, or with both

registered under sixteen.

28 The Magistrate may direct that any such boy shall be returned Maintenance to his parents or guardians, if they can be discovered. If they cannot be discovered, the Magistrate may make such arrangements as he thinks whose parents necessary for the maintenance and education of such boy, and may direct that the whole or any part of a fine inflicted under section 27 may be employed in defraving the cost of such arrangements

an l education of boys cannot be

The Local Government may direct out of what local or municipal

¹ See footnote to a 1 sugra General Acts Vol I

^{* &#}x27;ee footnote to s 12 supre

(Part II - Eunuchs The Schedule)

rund so much of the cost of such arrangements as is not met by the fine imposed, shall be defrayed

Disabilities of registered shall be capable—

- (a) of being or acting as guardian to any minor,
- (b) of making a gift,
- (c) of making a will, or(d) of adopting a son

Power to requ re in formation as to registered eunuch s property Penalty for refusing such information

ennuchs.

30 Any officer authorized by the 'Local Government in this behalf may, from time to time, require any enunch so registered to furnish information as to all property, whether movable or immovable, of or to which he is possessed or entitled, or which is held in trust for him

Any such cunuch intentionally omitting to furnish such information, or furnishing as true, information on the subject which he knows, or his reason to believe, to be false, shall be deemed to have committed an offence under section 176 or 177 of the ² Indian Penal Code, as the Xi cas. may be

Rules for making and keeping up registers of eunuchs 31 The ¹Local Government may, with the previous sanction of the Governor General in Council, make ² rules for the making and Leeping up and charge of registers made under this part of the Act

4 THE SCHEDULE

(See section 19A)

CERTAIN OFFENCES PUNISHABLE UNDER CHAPTERS XVI AND XVII OF THE XI

CHAPTER XVI

SECTIONS

- 299 Culpable homicide
- 307 Attempt to murder
- 308 Attempt to commit culpable homicide
- 310 Thug

See fifth footnote on p 177 s pra

^{*}Perulas or the United I rownces of Agra and Gudh see p 32 of Last 4 of the United Provinces Li to Local Rules and Orders 1904 Vol I Pt 1

"The schedule was added by a 7 of the Criminal Tribes Act Amendment Act, 1897 (II of 1897)

Criminal Tribes (The Schedule.)

THE SCHEDULE-continued.

SECTIONS.

- 322 Voluntarily causing grievous hurt.
- 324. Voluntarily causing hurt by dangerous weapons or means.
- 326. Voluntarily causing grievous hurt by dangerous weapons or means
- 327. Voluntarily causing hurt to extort property or to constrain to an illegal act.
- 328 Causing hurt by means of poison, etc., with intent to commit an offence
- 329 Voluntarily causing grievous hurt to extort property or to constrain to an illegal act
- 332 Voluntarily causing hurt to deter public servant from his duty.
- 333 Voluntarily causing grievous hurt to deter public servant from his duty.

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- 382. Theft after preparation made for causing death, hurt or restraint, in order to the committing of the theft.
- 383 Extertion
- 385 Putting person in fear of injury in order to commit extortion.
- 386 Extortion by putting a person in fear of death or grievous hurt.
 387 Putting person in fear of death or of grievous hurt in order to
- commit extortion.
 390 Robbery
- 391 Dacoity.
- 393 Attempt to commit robbery.
- 394 Voluntarily causing hurt in committing robbery.
- 397 Robbery or dacorty, with attempt to cause death or grievous
- 398 Attempt to commit robbery or decoity when armed with deadly weapon
- 399. Making preparation to commit decoity
- 402 Assembling for purpose of committing dacoity.
- 458 Lurking house-trespass or house breaking by night after preparation for hurt, assault or wrongful restraint.
- 459 Grievous hurt caused whilst committing lurking house-trespass or house-breaking
- 460 All persons jointly concerned in lurking house trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

(Preamble)

THE INDIAN WEIGHTS AND MEASURES OF CAPACITY ACT, 1871.

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2 Standard of weights

3 Units of weights and measures of capacity

4 Special weights and measures of capacity may be authorized

5 Districts how defined Sub districts how defined

6 Primary standards to be provided

7 Local standards to be provided

III -Use of new Weights and Measures of capacity

8 Use of new weights and measures of capacity in Government offices, etc.

9 Contracts by weight or measure of capacity

IV -Wardens

10 Appointment of Wardens

11 Power to make rules

12 Publication of rules Rules, when specially applied, to have force of law

13 Officers of Government and others to comply with rules 14 Warden may refuse to verify or correct things unfit

15 Exercise of any of Warden's powers

16 Counterfeiting Warden's marks

17 Tables of equivalents

ACT No XXXI of 1871

[30th October, 1871]

An Act to regulate the Weights and Measures of Capacity of British India

Proemble Whereas it is expedient to provide for the ultimate adoption of a

¹ For the Statement of Objects and Ressons see Gazette of India 1871 Pt V, p 398, for Proceedings in Council, see ibid 1871, Supplement, pp 1181, 1290, 1424, 1575

1871 : Act XXXI.] Weights and Measures of Capacity.

(1-Preliminary II-Standards)

uniform system of Weights and Measures of Capacity throughout British India, It is hereby enacted as follows -

I -Preliminary

1. This Act may be called the Indian Weights and Measures of Short title Capacity Act, 1871, and extends to the whole of British India

Local extent

II -Standards

2. The primary standard of weight shall be called a ser, and shall Standard of be a weight of metal in the possession of the Government of India, equal. when weighed in a vacuum, to the weight known in France as the Kilogramme de Archives

3 The units for weight and of measures of capacity shall be-

In to of we gl ts and measures of capacity

for weights, the said ser, for measures of capacity, a measure containing one such ser of water at its maximum density weighed in a vacuum

> Special weights and capacity may be authorized

4. The Governor General in Council may, from time to time, by notification in the Gazette of India,1 declare the magnitude and denominations of the weights and measures of capacity, other than the said units, to be authorized under this Act

Provided that every such weight or measure of capacity shall be an integral multiple or integral sub multiple of one of the units aforesaid

The Governor General in Council may, in like manner, revoke such notification

Unless it be otherwise ordered in any such notification, the subdivision of all such weights and measures of capacity shall be expressed in decimal parts

5 The Governor General in Council may from time to time, by Districts how notification in the Gazette of India define the limits of districts for defined. the purposes of this Act

The Local Government may, from time to time, by notification in saled streets the official Grzette, define the limits of sub districts for the purposes of how defined. this Act

6 The Governor General in Council may provide for such districts Prisery as he thinks fit, proper primary standards and sets of the said authorized standards to weights and measures of capacity

Such standards shall for the purposes of this Act, be deemed the standards for such districts

¹ No notifications have as yet been issued under this or any other section of this Act.

190 Weights and Measures of Capacity F1871 Act XXXI. (II -Standards III -Use of new Weights and Measures of Capacity

IV -- Wardens)

7. The Local Government may provide, for such sub districts as it thinks fit, copies of such of the said authorized weights and measures of capacity as shall be necessary to serve as local standards in such sub districts

> Such local standards shall be deemed correct, until they are proved to be otherwise

> > III -Use of new Weights and Measures of Capacity

8. Whenever the Governor General in Council considers that pro-Use of new weights and per standard weights and measures of capacity have been made available measures of for the verification of the weights and measures of capacity to be used capacity in Government by any Government office or municipal body or railway company, the offices etc Governor General in Council may, by notification in the Gazette of India, direct that, after a date to be fixed therein, all or any of the weights and measures of capacity authorized as aforesaid shall be used in dealings and contracts by such office, body or company, and may, in like manner, from time to time, alter or revoke such direction

notification to be used by such officers, bodies or companies

9 After the date fixed in any notification under section 8 all dealweight or ings and contracts had and made by the officers, bodies or companies, measure of capacity mentioned in such notification, for any work to be done or goods to be sold or delivered by weight or measure of capacity, shall, in the absence of a special agreement to the contrary, be deemed to be had and made according to the weights or measures of capacity directed in such

> IV -Wardens 10 The Governor General in Council and the Local Government,

respectively, shall appoint Wardens for the custody of the primary and local standard and sets of authorized weights and measures of capacity hereinbefore mentioned The Governor General in Council, or the Local Government, respec

tively, may, at any time, suspend or remove any such Warden and ap point another

11 The Governor General in Council may, from time to time, make rules consistent with this Act for regulating the following matters -

- (a) the appointment of Wardens, (b) the guidance of Wardens in all matters connected with the
- performance of their duties, (c) the provision replacement, custody and use of the standards,
- (d) the method of verifying local standards and weights, weighing machines and measures of capacity authorized under this Act, and balances, and of certifying such verification.

Local standards to b nrov ded.

Contracts by

1ppointment of wardens

Power to make rules.

(II - Il aidens 1

Provided that such verification shall not be required to be made oftener than once in two years,

- (e) the errors which may be tolerated in weights weighing machines and measures of capacity authorized under this Act and in balances.
- (f) the shapes, proportions and dimensions to be given to weights weighing machines and measures of capacity authorized under this Act, and to balances, and the materials of which they may be made
- (a) marling weights and measures of capacity authorized under this Act with their several denominations!
- (h) the conditions under which Government offices, municipal bodies and railway companies shall be subject to inspec tion and verification of the weights weighing machines and measures of capacity authorized under this Act and of the balances used by them
- (i) the fees to be paid for verifying, correcting and certifying the verification of weights, weighing machines and measures of capacity authorized under this Act, and of balances

12 Such rules shall be published in the Gazette of India

And the Governor General in Council may, by notification in the Gazette of India declare that from and after a day to be named therein, all or any of the said rules shall come into force in respect of any Government office municipal body or railway company and thereupon. to the extent specified in such notification such rules or rule shall have

force of law the force of law 13 All officers of Government municipal officers, and officers and Officers of servants of railway companies shall comply with such rules so far

as they concern them and pay such fees as the said rules shall prescribe 14 The Warden may deface, or render incapable of use or refuse to verify, correct or mark, anything brought to him for verification or

correction, which appears to him unfit for verification or correction 15 Any of the powers and duties conferred and imposed by this Frem se of Act on a Warden may be exercised and performed by any other officer

whom the Local Government may from time to time appoint 16 Whoever knowingly counterfeits any mark used by a Warden

under section 11 shall be punished with imprisonment for a term which may extend to three years, and shall also be hable to fine

17 The Local Government may, from time to time prepare tables Tables of of the equivalents of weights and measures of capacity, other than those equivalents authorized under this Act, in terms of the weights and measures of capacity so authorized, and the equivalents so stated, after notification in the local official Gazette, shall be deemed the true equivalents

I ubl cation of rules P iles when spec ally ap led to have

Covernment and others to comply w th Warden may ref se to s fy or correct

tlings unfit any of Warden's

powers. Counterfe t ing Warden's

THE INDIAN EVIDENCE ACT, 1872

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RELEVANCY OF FACTS.

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 - or is made in course of business,
 - or against interest of maker,
 - or gives opinion as to public right or custom, or matters of general interest,
 - or relates to existence of relationship,
 - or is made in will or deed relating to family affairs
 - or in document relating to transaction mentioned in section 13, clause (a),
 - or is made by several persons, and expresses feelings relevant to matter in question

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- 104 Burden of proving fact to be proved to make evidence ad missible
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- 130 Production of title deeds of witness not a party131 Production of documents which another person having posses
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- 145 Cross examination as to previous statements in writing
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- 163 Giving, as evidence, of document called for and produced on notice
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OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

167 No new trial for improper admission or rejection of evidence

(Part I .- Relevancy of Facts. Chapter I .- Preliminary.)

ACT No. I of 1872.

[16th March, 1872.]

Governor General, Central India,

The Indian Evidence Act, 1872.1

WHEREAS It is expedient to consolidate, define and amend the law of Evidence; It is hereby enacted as follows:--

PART I.

RELEVANCY OF FACTS.

CHAPTER I.

Short,tule. Extent.

Preamble.

1. This Act may be called the Indian Evidence Act, 1872.

It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts-martial, but not

the Standard Ot at and Breene or Crette of India, 1863, p 1574, for the date of the March 1871 set that, detect Committee dated 30th January, Jouncil, set that, 1869, Supplement, 42, and Supplement, p 1641, and

But see the Army Act (44 & 45 Vict , c 58), s 127, which is as follows -

Act I of 1872 is (subject to such modifications as the Governor General in Conneil may direct) applicable to all proceedings before Indian Marine Courts—see Act XIV of 1867, a 43, General Acts, Vol IV

Commencement of Act.

Repeal of enact-

ments.

(Part I - Relevancy of Facts Chapter I - Prelsmanary)

to affidavits 1 presented to any Court or officer, nor to proceedings before an arbitrator.

and it shall come into force on the first day of September, 1872

2 On and from that day the following laws shall be repealed -

(1) all rules of evidence not contained in any Statute. Act or

Regulation in force in any part of British India. (2) all such rules laws and regulations as have acquired the force of law under the 25th section of the Indian Councils Act, 1861,2 in so far as they relate to any matter herein

provided for and (3) the enactments mentioned in the schedule hereto to the extent

specified in the third column of the said schedule But nothing herein contained shall be deemed to affect any provision of any Statute Act or Regulation in force in any part of British India

and not hereby expressly repealed 3 In this Act the following words and expressions are used in the Interpre

following senses unless a contrary intention appears from the context - tar on

' Court' includes all Judges and Magistrates and all persons " Court." except arbitrators, legally authorized to take evidence

' Tact'' means and includes-

(1) any thing state of things or relation of things capable of being perceived by the senses,

(2) any mental condition of which any person is conscious

Illustrat ons

(a) That there are certain objects arranged in a certain order in a certain place is a fact

> acts in good faith was at a spec fied

(c) That a man has a certain reputation is a fact

One fact is said to be relevant to another when the one is connected "Relevant" with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts

" Fact.

[&]quot; de of Cavil Procedure 1908 s 30 (c) al o the Code of Criminal Procedure

of 1908) s 2 General Acts Vol VI, neral Acts Vol I and for a defini 1897 (V of 1897) s 3 (15) General

^{*} Cf the General Clau es Act 1897 (A of 1897) s 3 (\$1) and Code of Criminal Procedure 1893 (\ of 1898)

(Part 1 -Relevancy of Facts Chapter I - Preliminary)

* Facts in issue "

The expression "facts in issue" means and includesany fact from which, either by itself or in connection with other facts, the existence, non existence, nature or extent of any right,

hability, or disability, asserted or denied in any suit or proceeding, necessarily follows

Explanation -Whenever, under the provisions of the law for the time being in force relating to Civil Procedure,1 any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue

Illustrations

A is accused of the murder of B At his trial the following facts may be in issue -that A caused B s death

leath was by reason of

",Docu ment '

' Document 2 means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used, for the purpose of recording that matter

Illustrat ons

A writing ' is a document
' Words printed lithographed or photographed are documents

A map or plan is a document

An inscription on a metal plate or stone is a document A caricature is a document

I vidence "

" Proved."

" Evidence" means and includes-

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under maury

such statements are called oral evidence.

(2) all documents produced for the inspection of the Court,

such documents are called documentary evidence

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists

See now Act V of 1908 General Acts Vol VI

With reference to the settlement of issues see the Code of Civil Procedure 1908 (Act V of 1903) Sch I Order VIV

³ Cf s 29 of the Indian Penal Code (Act VLV of 1860) General Acts Vol I, and s 3 (16) of the General Linuses Act 1897 (X of 1897) General Acts Vol IV

^{*} Cf definition of writing in s 3 (58) of the General Clauses Act 1897 (Y of 1897) General Acts Vol IV

(Part I - Relevancy of Facts Chapter I - Prelyminary Chapter II - Of the Relevancy of Tacts ;

A fact is said to be disproved when, after considering the matters "Disproved." before it, the Court either believes that it does not exist, or considers its non existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist

A fact is said not to be proved when it is neither proved nor disproved

proved "

4. Whenever it is provided by this Act that the Court may presume "May a fact, it may either regard such fact as proved, unless and until it is presume." disproyed, or may call for proof of it

Whenever it is directed by this Act that the Court shall presume a "Snall prefact, it shall regard such fact as proved unless and until it is disproved When one fact is declared by this Act to be conclusive proof of

sume " " Conclu sive proof **

another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it

CHAPTER II

OF THE RELEVANCE OF PACTS

5 Evidence may be given in any suit or proceeding of the existence Typical or non existence of every fact in issue and of such other facts as are may be given hereinafter declared to be relevant, and of no others

isque and

Explanation -This section shall not enable any person to give relevant evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure 1

Illustrations

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death

At A s trial the folloving facts are in issue -

As beating B with the club

As causing Bs death by such beating A a intention to cause B a death

(b) A sustor does not bring with him and have in readiness for production at the first hearing of the case a bond on which he relies. This section does not enable him to produ e the bond or prove its contents at a s been ent stage of the proceedings of termine than in accordance with the conditions prescribed by the Code of Civil Procedure.

6 Pacts which, though not in issue are so connected with a fact Lelevance of in issue as to form part of the same transaction, are relevant, whether facts forming they occurred at the same time and place or at different times and places transaction.

204 Enidence F1872 : Act I.

(Part I - Relevancy of Facts Chapter II - Of the Relevancy of Facts)

Illustrations

(a) A is accused of the murder of B by beating him Whatever was said or done by

etters part of the coffesto delice in which it is contained are resyably facts thought they do not

contain the libel itself (d) The question is whether certain goods ordered from B were delivered to A The vant fact

Facts which are the occa s on cause or effect of facts in ussue

7. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant

Illustrat ons

(a) The question is whether A robbed B The facts that shortly before the robbery B went to a fair with money in his posses sion and that he showed it or mentioned the fact that he had it to third persons are

(b) The question is whether A murdered B Marks on the ground produced by a struggle at or near the place where the murder was committed are relevant facts

(c) The question is whether A poisoned B
The state of B s health before the symptoms ascribed to poison and habits of B, known to A which afforded an opportunity for the administration of poison are relevant facts

Motive pre parat on and prev ous or subsequent conduct

8 Any fact is relevant which shows or constitutes a motive or pre paration for any fact in issue or relevant fact

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto

Explanation 1 - The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act

Explanation 2 -When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant

Illustrations

(a) A is tried for the murder of B
The facts that A murdered C that B knew that A had murdered C and that B had tried to extort money from A by threatening to make his knowledge public are relevant

1872 : Act I]

(Part I-Relevancy of Facts Chapter II-Of the Relevancy of Facts)

(b) A sues B upon a bond for the payment of money B denies the making of the bond

The fact that at the time when the bond was alleged to be made B required money for a particular purpose is relevant (c) A is tried for the murder of B by poison The fact that before the death of B A procured poison similar to that which was

into matters

11 reference of which he

(e) A is accused of a crime
The facts that either before or at the time of or after the alleged crime. A provided evidence which would tend to give to the facts of the case an appearance favourable to himself or that he destroyed or concealed evidence or prevented the presence or procured the absence of persons who might have been witnesses or suborned persons to give false evidence respecting it are relevant

(f) The quest on is whether A robbed B
The facts that after B was robbed C said in A s presence— the pol ce are coming to look for the man who robbed B and that immediately afterwards A ran away, are relevant

(g) The question is whether A owes B rupees 10 000

The facts that A asked C to lend h m money and that D said to C in A s presence and hearing- I advise you not to trust A for he owes B 10 000 rupees and that A went away without making any ans ver are relevant facts

(A) The question is whether A comm tted a crime

was being

or was in empted to

The facts that shortly after the alleged rape she made a complaint relating to the crime the circumstances under which and the terms in which the complaint was made are relevant

T' f .

The fact that soon after the alleged robbery he made a complaint relating to the offence the circumstances under which and the terms in which the complaint was made

The fact that he said he had been robbed without making any complaint is not relevant as conduct under this section though it may be relevant as a dying declaration under section 32 clause (1) or as corroborative evidence under section 157

9 Facts necessary to explain or introduce a fact in issue or relevant. Factor refact or which support or rebut an inference suggested by a fact in issue enlines or relevant fact or which established the identity of any thing or introducere person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose

Illustrat ons

(a) The quest on is whether a given document is the will of A. The state of As property and of his family at the date of the alleged will may be relevant facts

(Part I - Relevancy of Facts Chapter II - Of the Relevancy of Tacts)

(b) A sues B for a libel imputing disgraceful conduct to A, B affirms that the matter alleged to be libelloos is true The position and relations of the parties at the time when the libel was published may

me when the libel was published may bout a matter unconnected with the was a dispute may be relevant if it

suddenly

except in so far as they

ade by him with A C, B has made me a better.

This statement is a relevant fact as explanatory of C s conduct which is relevant.

1

offer Ihs statement is a relevant fact as explanatory of C s conduct which is relevant as a fact in result of theft is seen to give the stolen property to B who is seen to give it to A s wife B says as he delivers it—A says your are to hide this B s statement [1]. A list tried for a riot and is proved to have marched at the head of a mob The cries of the mob are relevant as explanatory of the nature of the transaction.

Things and or done by consurator in reference to common des gn. 10 Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it

Illustration

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen

The facts that B procured arms in Europe for the purpose of the conspiracy C

The facts that B procured arms in Europe for the purpose of the

When facts not otherwise relevant become relevant.

- 11 Tacts not otherwise relevant are relevant-
 - (1) if they are inconsistent with any fact in issue or relevant fact,
 - (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable

Illustrations

(a) The question is whether A committed a crime at Calcutta on a certain day. The fact that on that day, A was at Lahore is relevant

(Part I-Relevancy of Facts Chapter II -Of the Relevancy of Facts)

The fact that near the time when the crime was committed A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant

The question is, whether A committed a crime The circumstances are such that the crime must have been committed either by A, B, C or D Every fact which shows that the crime could have been committed by no one else and that it was not committed by eather B, C or D, is relevant

12. In suits in which damages are claimed, any fact which will Insuits for enable the Court to determine the amount of damages which ought to 'acts tending be awarded, is relevant.

damages. to enable Court to determine amount, aro relevant. Facts relevant when right or custom as

in quest on

- 13. Where the question is as to the existence of any right or custom, the following facts are relevant -
 - (a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence
 - (b) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from

Illustration

The question is whether A has a right to a fishery A deed conferring the fishery on As ancesions a mortgage of the fishery by A is father a subsequent grant of the fishery by A's father irreconcilable with the mortgage jarticular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts

14. Facts showing the existence of any state of mind, such as in- Facts show tention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant

ing existence of state of mad, cr of body, or bod is teel

¹ Explanation I -A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question

Explanation 2 -But where, upon the trial of a person accused of offence, the previous commission by the accused of an offence relevant within the meaning of this section, the previous contion of such person shall also be a relevant fact 2

Illustrations

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved he was in possession of a particular stolen article

I here explanations were substituted for the original explanation to s 14 by the 1 Deed explanations were substituted Act 1891 (III of 1891) at 1(f) Gent Acts 1 (IV) and 1

(Part I .- Relevancy of Facts. Chapter II .- Of the Relevancy of Facts)

The fact that, at the same time, he was in possession of many other stolen articles is relevant as tending to show that he knew each and all of the articles of which he was in possession to be stolen

¹(b) A is accused of fraudulently delivering to another person a counterfeit coin which at the time when he delivered it he knew to be counterfeit

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfest coin is relevant-The fact that A had been previously convicted of delivering to another person as

genuine a counterfe t coin knowing it to be counterfeit is relevant

(c) A sues B fo damage done by a dog of B s which B knew to be ferocious

The facts that the dog had previously bitten Y, Y and Z, and that they had made complaints to B are relevant (d) The question is whether A the acceptor of a bill of exchange, knew that the name

of the payee was fictitious The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant

as showing that A knew that the payee was a fictitious person (e) A is accused of defaming B by publishing an imputation intended to harm the

reputation of B The fact of previous publications by A respecting B showing ill will on the part of A

towards B is relevant, as proving A s intention to harm B s reputation by the particular publication in question The facts that there was no previous quarrel between A and B and that A repeated the

matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B (/) A is sued by B for fraudulently representing to B that C was solvent whereby B.

being induced to trust C who was insolvent suffered loss d to be

that A

owner. by the order of C a contractor A s defence is that B s contract was with C The fact that A paid C for the work in question is relevant as proving that A did,

t C was in a had found. uth that the

real owner could not be found The fart that public motion of the loss of the property had been given in the place where A was is relevant as showing that A did not in good faith believe the's the real owner of the property could not be found

The fart that A knew or had reason to believe that the notice was given fraudulently

by C who had heard of the loss of the property and wished to set up a false claim to it

(a) A is charged with shooting at B with intert to kill bim. In order to show A 2

eviously alleged

cruelty are relevant facts

relevant facts

(i) The question is whether A s death was caused by poison,

Statements made by A during his illness as to his symptoms are relevant facts (m) The question is what was the state of A s health at the time an assurance on his

life was effected Statements made by A as to the state of his health at or near the time in question are

(n) A sues B for pegligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured

This illustration was substituted for the original illustration (b) to s 14 by Act III of 1891, a. 1 (2), General Acts, Vol. IV.

(Part I - Relevancy of Facts Chapter II - Of the Relevancy of Facts.)

The fact that B s attention was drawn on other occasions to the defect of that parti

cular carriage is relevant The fact that B was habitually negligent about the carriages which he let to hire is irrelevant

(a) A is tried for the murder of B by intentionally shooting him dead. The fact that A on other occasions shot at B is relevant as showing his intention to

The fact that A was in the hab t of shooting at people with intent to murder them is

irrelevant (p) A is tried for a crime

The fact that he said something indicating an intention to commit that particular

crime is relevant

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

15. When there is a question whether an act was accidental or intentional, '[or done with a particular knowledge or intention], the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant

Facts hearing on a anestion .1 whether act was acci Jental or intentional.

Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured reg The forty that the land is a small conservation to hof in high insured in

yment from a not accidental duty to make v showing that

that the false

entry is in each case in favour of A are relevant

entry in each code of fraudalentry delivering to B a counterfeat ruppe.

The question is whether the delivery of the rup ewas accidental.

The facts that soon before or soon after the delivery to B A delivered counterfeit, uspects OC D and E are releasant as showing that the delivery to B was not accidental.

16 When there is a question whether a particular act was done, Existence of the existence of any course of business according to which it naturally course of basiness. would have been done, is a relevant fact when relevant

Illustrations

(c) The question is whether a particular letter was despatched

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post and that that particular letter was put in that place are relevant

(b) The question is whether a parti ular letter reached A. The facts that it was posted in due course and was not returned through the Dead Letter Office are relevant

ADMISSIONS

17 An admission is a statement, oral or documentary, which sug- Admission gests any inference as to any fact in issue or relevant fact, and which is defired. made by any of the persons and under the circumstances, hereinafter mentioned

These worls in s 15 were inserted by the Indian Evidence Act (1872) Amendment Act 1891 (III of 1891) a 2 General Acts Vol IV 10 10 P

(Part I - Relevancy of Tacts Clapter II -Of the Relevancy of Facts)

Admission by purty to proceeding or his agent

18 Statements made by a party to the proceeding or by an agent to any such party whom the Court regards under the circumstances of the case as expressly or impliedly authorized by him to make them are admissions

by suitor in representative character

Statements made by parties to suits suing or sued in a representative character are not admissions unless they were made while the party making them held that character

Statements made by-

by pa ty (1) persons who have any proprietary or pecuniary interest in interested in the subject matter of the proceeding and who make the subjectmatter statement in their character of persons so interested or

(2) persons from whom the parties to the suit have derived their interest in the subject matter of the suit

are admissions if they are made during the continuance of the inter est of the persons making the statements

Admissions by persons whose post tion must be proved as against party to suit.

by person from whom

interest derived

> 19 Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them and if they are made whilst the person making them occupies such position or is subject to such liability

> > Illust at ons

om C to B

t is an adm s on and is a rele ant fact as aganst A 1 A ne es at o quo e re

A l nissions by persons expressly r ferred to by party to suit

20 Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions

Illust at on

The quest on is whether a horse sold by A to B is sound A says to B- Go and ask C C knows all about it

C s statement s an adm ssion 21 Admissions are relevant and may be proved as against the per

son who makes them or his representative in interest but they cannot la proved by or on behalf of the person who makes them or by his repre sentitive in interest except in the following cases -

(1) An admission may be proved by or on behalf of the person mak ing it when it is of such a nature that if the person making it were dead it would be relevant as between third persons under section 32

(2) An admission may be proved by or on behalf of the person mal and it when it consists of a statement of the existence of any state of

Proof of ad miss ons agunst persons making behalf.

them and by or on th ir

(Part I - Relevancy of Facts Chapter II - Of the Relevancy of Facts)

mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission

Illustrations

(a) The question between A and B is whether a certain deed is or is not forged. A affirms that it is genuine B that it is forged 2 D ---

He produces a letter written by himself and dated at Lahore on that day and bearing the I shore post mark of that day

The statement in the date of the letter is admissible because if A were dead it

and be determent in the date of the letter is admissione obscules if A were dead it would be admissible under section 32 claves (nowing them to be stolen (d) A is accused of receiving stolen goods knowing them to be stolen He offers to prove that he refused to sell them below their value A may prove these statements though they are admissions because they are explanations.

tory of conduct influenced by facts in issue (e) A is accused of fraudulently having in his possession counterfeit coin which be

knew to be counterfest He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not and that that person did examine it and told him it was

A may prove these facts for the reasons stated in the last preceding illustration

22 Oral admissions as to the contents of a document are not rele vant unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document of document under the rules hereinafter contained, or unless the genuineness of a document produced is in question

When oral admissions a to contents are relevant

23 In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under our cumstances from which the Court can infer that the parties agreed toge vant ther that evidence of it should not be given

1dmissions in civil cases when rele

Explanation - Nothing in this section shall be taken to exempt any barrister pleader attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126

24 A confession made by an accused person is irrelevant in a cri- Confes in minal proceeding if the making of the confession appears to the Court cared ty to have been caused by any inducement, threat or promise 1 having re-

induce ment t'rest or pro na-

^{&#}x27;l or red ibition of such and seements etc. see s 343 of the Code of Criminal Procedure 1898 (Act V of 1898) General Acts Vol V

(Part I - Relevancy of Facts Chapter II .- Of the Relevancy of Facts)

when irrele vant in criminal proceeding ference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him

police officer not to be proved Confession by accused while in custody of police not to be proved against him

Confession to

25 No confession made to a police officer 's shall be proved as against a person accused of any offence

26 No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Mag istrate, shall be proved as against such person

³Explanation—In this section "Magistrate" does not include the head of a village decharging magisterial functions in the Presidency of Fort St George or in Burma or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 4

How much of information received from accused may be proved

Confession

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved

28 If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant

made after removal of impression caused by induce ment, ti reat or pron is relevant Confession otherwise relevant not to become irrelevant because of pronise

of secrecy

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given aga ust him

^{&#}x27;In Upper Burma insert "who is a Magatrite see s 4 (5) (c) of the Burma Insert | 1893 (VIII of 1895) Bur Code As to statements made to a policy officer investigating a case, see the Code of Criminal Procedure 1898 (Act V of 1898), General Acts Vol 1.

(Part I-Relevancy of Facts Chapter II-Of the Relevancy of Facts)

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well son making it as against the person who makes such confession

confession affecting per and others jointly under trial for same offence

Considera tion of

proved

Explanation - Offence" as used in this section, includes the abetment of, or attempt to commit, the offence 2

Illustrations

(a) A and B are jointly tried for the murder of C It is proved that A said- B an I I murdered C The Court may consider the effect of this confession as against B (b) A is on his trial for the murder of C There is evidence to show that C was

murdered by A and B and that B said- A and I murdered C This statement may not be taken into consideration by the Court against A as B is

not being jointly tried

31 Admissions are not conclusive proof of the matters admitted Admissions but they may operate as estoppels under the provisions hereinafter con- sive proof, farned

STATEMENTS BY PURSONS WHO CANNOT BE CALLED AS WITNESSES

32 Statements written or verbal, of relevant facts made by a per son who is dead, or who cannot be found, or who has become incapable ment of of giving evidence or whose attendance cannot be procured without an relevant amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the is dead or following cases -

Cases in which state. fact by person who cannot be founl etc. is relevant Wl en it relates to ra re of

death .

not conclu

but may

estop

(1) When the statement is made by a person as to the cruse of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question

(2) When the statement was made by such person in the orlinary or is made in course of business and in particular when it consists of any entry or business. memorandum made by him in books kept in the ordinary course of busi ness, or in the discharge of professional duty or of an acknowledgment written or signed by him of the receipt of money goods securities or

^{*}This explanation was inverted in a 30 by the Indian Evidence Act (1877) Amendment Act 1891 (III of 1891) s 4 General lete Vol IV * Cf Fxplanat on 4 to s 108 of the Indian Penal Code (Act \L\ of 1850 General Acts, Vol 1

(Part I.—Relevancy of Facts Chapter II - Of the Relevancy of Facts)

property of any kind, or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him

or against interest of maker, (3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages

or gives opinion as to pullic right or custom or matters of general interest. (4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen

or relates to existence of relationship,

(5) When the statement relates to the existence of any relationsl ip ¹[by blood, marriage or adoption] between persons as to whose relationship ¹[by blood marriage or adoption] the person making the statement had special means of knowledge and when the statement was made before the question in dispute was ruised

or is made in will or deed relating to family affairs (6) When the statement relates to the existence of any relationship '[bv blood, marringe or adoption] between persons deceased, and is mide in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was mide before the question in dispute was raised

or in docu ment relating, to transaction mentioned in section 13 clause (a), or is made by several persons and express, feelings relevant to

matter in

or in document relating, ment which relates to any such transaction as is mentioned in section 13, mentioned in clause (a)

(5) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question

Illustrations

vant fact

Ludence

215

(Part I -Relevancy of Facts Chapter 11 - Of the Relevancy of Facts)

ship sailed on a given day from Bombay harbour is a relevant fact

(g) The question is whether A a person who cannot be found wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(h) The question is what was the cause of the wre k of a ship A protest made by the Captain whose attendance cannot be produced is a relevant

(i) The question is whether a given road is a public way. A statement by A is a deceased headman of the village that the road was public, is a relevant fact

(7) The question is what was the price of grain on a certain day in a particular market statement of the price made by a deceased banya in the ordinary cour e of his busi

ss is a relevant fact
(A) The question is whether A who is dead was the father of B

A statement by A that B was his son is a relevant fact (1) The question is what was the date of the birth of A

A letter from 1 s deceased father to a friend announcing the birth of A on a given is a relevant fact

(m) The question is whether and when A and B were married An entry in a memorandum book by C the deceased father of B of his daughter s riage with 1 on a given date is a relevant fact

(n) I sues B for a libel expre sed in a painted carresture exposed in a shop window question is as to the sm larity of the car ature and its I belious character. The arks of a clowd of spectators on the e points may be proved

33 Evidence given by a witness in a judicial proceeding, or before nerson authorized by law to take it is relevant for the purpose of ofcertain ting, in a subsequent judicial proceeding, or in a later stage of the judicial proceeding, the truth of the facts which it states, when a begint witness is dead or cannot be found, or is incipable of giving evi e, or is kept out of the way by the adverse party, or if his presence of be obtained without an amount of delay or expense which, under s circumstances of the case the Court considers unreasonable

Relevancy evidence for proving in procee ling the truth of facts therein state d

Provided-

that the proceeding was between the same parties or their representives in interest,

that the adverse party in the first proceeding had the right and op portunity to cross examine.

that the questions in issue were substantially the same in the first as in the second proceeding

Explanation -A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section

(Part 1 - Relevancy of Facts Chapter II - Of the Relevancy of Facts)

Fatries in hooks of account when relevant.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

34 Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability

Illustration

A sues B for R1 000 and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant but are not sufficient without other evidence to prove the debt

Relevancy of entry in public record m de in performancel of duty

35 An entry in any public or other official bool, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book register or record is lept is itself a relevant fact

Relevancy of statements in maps charts and plans

36 Statements of facts in issue or relevant facts made in published maps or charts generally offered for public sale, or in mans or plans made under the authority of Government, as to matters usually repre sented or stated in such maps charts or plans are themselves relevant facts

Relevancy of staten ent as to fact of public nature contained in certain Acts or notifica tions.

37 When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it made in a recital con tuned in any Act of Parliament or in any Act of the Governor General of India in Council or of the Governors in Council of Madris or Bom bay, or of the Lieutenant Governor in Council of Bengal, or in a notifi cation of the Government appearing in the Gazette of India or in the Gazette of any Local Government, or in any printed paper purporting to be the London Gazette or the Government Gazette of any colony or possession of the Queen, is a relevant fact

2 This section applies also to any Act of the Lieutenant Governor in Council of the North Western Provinces and Oudh, the Punjah ("

Relevancy of statements

Burma 38 When the Court has to form an opinion as to a law of any coun try, any statement of such law contained in a book purporting to be

The reference to the Lieutenant Governor in Council of the North Western Provinces and Outh shoul I now be construed as referring to the I isutenant Governor of the United Provinces of Agra and Outh in Council see the United Provinces (Designation) Act, 1922 (111 of 1922) ib d

^{*} Cf * 198 of the Indian Compunies Act 1882 (VI of 1882) General Acts Vol III, and Sch I Order VII rule 17 of the Cole of Grul Procedure 1903 (Act Vol 1908) General Acts Vol VI as to admissibility in evidence of certified composing estimates abooks see a 4 of the Punkers Books Fundence Act 1891 (VIII of 1891) General Acts Vol IV This paragraph was added by s 2 of the Indian Fysdence Act 1899 (V of 1899) General Acts Vol V

(Part I - Relevancy of Facts Chapter II - Of the Relevancy of Facts)

printed or published under the authority of the Government of such as to any law contained in country and to contain any such law, and any report of a ruling of the law books Courts of such country contained in a book purporting to be a report of such rulings, is relevant

HOW MUCH OF A STATEMENT IS TO BE PROVED

39 When any statement of which evidence is given forms part of a What evi longer statement, or of a conversation or part of an isolated document, given when or is contained in a document which forms part of a book, or of a con-statement nected series of letters or papers, evidence shall be given of so much a conversa and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and letters or of the circumstances under which it was made

dence to be forms part of tion docu ment book or series of papers

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT

40. The existence of any judgment, order or decree which by law Previous prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take bar a second cognizance of such suit or to hold such trial

judgments relevant to suit or trial

41 A final judgment, order or decree of a competent Court, in the Relevance exercise of probate matrimonial admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing is relevant

of certain judgmenta in probate etc. jurisdiction

Such judgment, order or decree is conclusive proof-

that any legal character which it confers accrued at the time when such judgment order or decree came into operation.

that any legal character to which it declares any such person to be entitled, accrued to that person at the time when such judgment.

'[order or decree] declares it to have accrued to that person. that any legal character which it takes away from any such person

cersed at the time from which such judgment '[order or decree] declared that it had ceased or should cease, and that anything to which it declares any person to be so entitled

was the property of that person at the time from which such judgment. "[order or decree] declares that it had been or should be his property

These words n s 41 wherever they occur were in crted by the Indian Evidence Act. Amendment Act (\\ III of 1872) a 3 infra

(Part I.-Relevancy of Facts. Chapter II - Of the Relevancy of Facts)

Relevancy 42. Judgments, orders or decrees other than those mentioned in secand effect of tion 41 are relevant if they relate to matters of a public nature relevant judgments, orders or to the enquiry; but such judgments, orders or decrees are not conclusive decrees, other proof of that which they state. than those mentioned in section 41

ı

Judgments,

etc , other

than those mentioned

in sections

Frand or

proved

Opinions of experts.

relevant

Illustration

A sues B for trespass on his land B alleges the existence of a public right of way over the land, which A denies The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other 40 to 42, when provision of this Act.

Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C

(b) A prosecutes B for adultery with C. A s wife B denies that C is A's wife, but the Court convicts B of adultery

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime C says

that she never was A s wife The judgment against B is irrelevant as against C

(c) A prosecutes B for stealing a cow from him B is convicted

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant

(d) A has obtained a decree for the possession of land against B C, B s son, murders A in consequence

The existence of the judgment is relevant, as showing motive for a crime

4 3 6 43 6

The that

r the fact in issue

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and

collusion in obtaining which has been proved by the adverse party, was delivered by a Court judgment, or not competent to deliver it, or was obtained by fraud or collusion. incompetency of Court, may be

OPINIONS OF THIRD PERSONS, WHEN RELEVANT.

45. When the Court has to form an opinion upon a point of foreign

These illustrations were added to a 43 by the Indian Fundance Act (1872) Amendment Act, 1891 (III of 1891), \$ 5, General Acts, Vol 11

1.11

(Part I - Relevancy of Facts Chapter II - Of the Relevancy of Facts)

law, or of science, or art, or as to identity of handwriting 'for finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, 2[or in questions as to identity of handwriting] '[or finger impressions] are relevant facts

Such persons are called experts

Illustrations

(a) The question is whether the death of A was caused by poison The opinion of experts as to the symptoms produced by the poison by which A s

he time of doing a certain act was by reason of ving the nature of the act or that he was doing

question whether the symptoms exhibited by A he have he ndness of mind usually ren they do or of knowing Ano her document

ments were written by

46 Facts not otherwise relevant, are relevant if they support or Facts bear are inconsistent with the opinions of experts when such opinions are opinions of relevant

Illustrations

rtaın

wall were

47 When the Court has to form an opinion as to the person by Opinion as whom any document was written or signed the opinion of any person ing when acquainted with the handwriting of the person by whom it is supposed relevant, to be written or signed that it was or was not written or signed by that person, is a relevant fact

Explanation -A person is said to be acquainted with the handwrit ing of another person when he has seen that person write, or when he has received documents purporting to be written by that person in an swer to documents written by himself or under his authority and addressed to that person or when in the ordinary course of business, docu ments purporting to be written by that person have been habitually submitted to him

¹ The words or finger impressions in both places where they occur in s 45 were [1899] General Acts Vol V For discussion include thumb impress ons see Gazette

(Part I - Relevancy of Facts Chapter II - Of the Relevancy of Tacts)

Mustration

The question is, whether a given letter is in the handwriting of A, a merchant in London

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him C is B s clerk whose duty it was to examine and file B s correspondence D is B s broker to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon The opinions of B C and D on the question whether the letter is in the handwriting of

A are relevant though neither B C nor D ever saw A write

48 When the Court has to form an opinion as to the existence of any general custom or right the opinions, as to the existence of such custom when custom or right, of persons who would be likely to know of its existence of it existed, are relevant

> Explanation -The expression "general custom or right" includes customs or rights common to any considerable class of persons

Illustration

The right of the villagers of a particular village to use the water of a particular well as a general right within the meaning of this section

49 When the Court has to form an opinion as to-

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable found ation or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts

50 When the Court has to form an opinion as to the relationship of one person to another the opinion, expressed by conduct, as to the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act,1 or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code 2

Illustrations

(a) The question is whether A and B were married The fact that they were usually received and treated by their friends as husband and wife is relevant (b) The question is whether A was the legitimate son of B The fact that A was

always treated as such by members of the family is relevant

51 Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant

Grounds of opinion when relevant.

Upinion as to existence

of right or

Opinion as to usages.

tenets etc.

Oninion on relationship

when

relevant.

when relevant.

relevant

1 001

Errdence

(Part I - Relevancy of Facts Chapter II - Of the Relevancy of Facts Part II - On Proof Chapter III - Facts which need not be proved)

Illustration

An expert may give an account of experiments performed by him for the purpose of forming his opinion

CHARACTER WHEN RELEVANT

52 In civil cases the fact that the character of any person concerned Incivil is such as to render probable or improbable any conduct imputed to cases him is irrelevant, except in so far as such character appears from facts to prove otherwise relevant

character conduct imputed irrelevant

53 In criminal proceedings the fact that the person accused is of a Increment good character is relevant

cases pre vious good character relevant Previous bad character not

²54 In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has relevant a good character, in which case it becomes relevant except in

Explanation 1 - This section does not apply to cases in which the reply

bad character of any person is itself a fact in issue Explanation 2 - A previous conviction is relevant as evidence of

had character

55 In civil cases the fact that the character of any person is such Character as to affect the amount of damages which he ought to receive, is relevant

damages.

Explanation -In sections 52 53 54 and 55 the word "character" includes both reputation and disposition but 2 [except as provided in section 54] evidence may be given only of general reputation and general disposition and not of particular acts by which reputation or disposition were shown

> Part II ON PROOF

CHAPTER III

FACTS WHICH VELD NOT BE PROVED

56 No fact of which the Court will take judicial notice need be Fact judiciproved

ally notice able need not be proved,

· 1 TV

Facts of

must take judicial

notice

which Court

(Part II — On Proof Chapter III — Facts which need not be proved)

57 The Court shall take judicial notice of the following facts —

(1) all laws or rules having the force of law now or heretofore in force, or hereafter to be in force in any part of British India

(2) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed

(3) Articles of War for Her Majesty's Army or Navv

(4) the course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act, or any other law for the time being relating 2 thereto

Explanation —The word "Parliament" in clauses (2) and (4) in cludes—

- (1) the Parliament of the United Kingdom of Great Britain and Ireland
- (2) the Parliament of Great Britain,
- (3) the Parliament of England,
- (4) the Parliament of Scotland and
- (o) the Parliament of Ireland
- (a) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland
- (6) "Il seals of which English Courts take judicial notice the seals of all the Courts of British India and of all Courts out of British India, established by the authority of the Governor General? or any Local Government in Council the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India
- (7) the accession to office names titles functions and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the Garctic of India or in the official Gazette of any Local Government
- (8) the existence title and national flag of every State or Sovereign recognized by the British Crown
- (9) the divisions of time the geographical divisions of the world, and public festivals fasts and holidays notified in the official Gazette
 - (10) the territories under the dominion of the British Crown
- (11) the commencement continuance and termination of hostilities between the British Crown and an other State or body of persons

^{*}Coll Stat Vol I *Tor livis of a ch Courts see the not feations printed on pp 372 to 374 of the Western India Volume of Marpherson a Lista of Br tial Fractments in force in Native States

(Part II -On Proof Chapter III -Facts which need not be proved Chapter IV -Of Oral Lvidence)

- (12) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates attorneys, proc tors, valils, pleaders and other persons authorized by law to appear or act before it
- (13) the rule of the road '[on land or at sea] In all these cases2 and also on all matters of public history, literature science or art, the Court may resort for its aid to appropriate books or documents of refer

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to dasa

58 No fact need be proved in any proceeding which the parties Facts admit thereto or their agents agree to admit at the hearing or which before the be proved hearing, they agree to admit by any writing under their hands or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings

ted need not

228

Provided that the Court may, in its discretion require the facts admitted to be proved otherwise than by such admissions

CHAPTER IV

OF ORAL EVIDENCE

59 All facts except the contents of documents may be proved by Proof of oral evidence

60 Oral evidence must in all cases whatever, be direct that is to Oral evidence sayif it refers to a fact which could be seen it must be the evidence

facts by oral ience must be direct

of a witness who says he saw it, if it refers to a fact which could be heard it must be the evidence

of a witness who says he heard it, if it refers to a fact which could be perceived by any other sense or in any other manner it must be the evidence of a witness who says

he perceived it by that sense or in that manner if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds

1 The e vords n section 57 para (15) were inserted by the Indian Evidence Act Amendment Act (\V)III of 1879 s 5 infra For an add itsnal, e.e. see the Code of Civil Procedure 1908 (Act V of 1908) s &

⁽²⁾ Ceneral Acts Vol VI

[1872 : Act I.

(Part II - On Proof Chapter V - Of Documentary Evidence)

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit require the production of such material thing for its inspection

CHAPTER V

OF DOCUMENTARY EVIDENCE

Proof of contents of documents may be proved either by primary or documents of documents by secondary evidence

62 Primary evidence means the document itself produced for the inspection of the Court

Explanation 1 —Where a document is executed in several parts, each part is primary evidence of the document

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it

Explanation 3 —Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest, but, where they are all copies of a common original, they are not primary evidence of the contents of the original

Illustration

A person is shown to have been in possession of a number of placards all printed at our time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original

- 63 Secondary evidence means and includes-
 - (1) certified copies given under the provisions hereinafter contained.
 - (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies,
 - (3) copies made from or compared with the original,

Pumary

evidence

becondary evidence

(Part II - On Proof. Chapter V - Of Documentary Ludence)

- (4) counterparts of documents as against the parties who did not execute them.
- (5) oral accounts of the contents of a document given by some person who has himself seen it

Illustrations

g riginal is e original

> al account iginal

64 Documents must be proved by primary evidence except in the Proof of cases heremafter mentioned

documents by primary evi lence

65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases -(a) when the original is shown or appears to be in the possession evidence

Cases 10. which secondary relating to doct ments

or powerof the person against whom the document is sought to may be be proved, or of any person out of reach of, or not

subject to, the process of the Court, or of any person legally bound to produce it.

and when, after the notice mentioned in section 66, such person does not produce it.

- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest.
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time.
- (d) when the original is of such a nature as not to be easily moveable,
- (e) when the original is a public document within the meaning of section 74,
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence,1

[°]Cf the Bankers Books Evidence Act 1891 (NVIII of 1891 Vol. IÝ

(Part II - On Proof Chapter V - Of Documentary Evidence)

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible

In case (b), the written admission is admissible

Rules as to

document produced. Proof of

notice to produce

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents

66. Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, "for to his attorney or pleader,] such notice to produce it as is prescribed by law, and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it -

- (1) when the document to be proved is itself a notice,
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it,
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force.
- (4) when the adverse party or his agent has the original in Court.
- (5) when the adverse party or his agent has admitted the loss
- of the document. (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court
- 87. If a document is alleged to be signed or to have been written
- Proof of aignature and wholly or in part by any person, the signature or the handwriting of so handwriting much of the document as is alleged to be in that person's handwriting of person alleged to must be proved to be in his handwriting. have signed or written
- 68. If a document is required by law to be attested, it shall not be execution of used as evidence until one attesting witness at least has been called document for the purpose of proving its execution, if there be an attesting witness

These words in section 66 were inserted by the Indian Evidence Act Amendment Act (XVIII of 1872), s. 6, infra

be proved as if it was unattested

(Part II - On Proof Clapter V - Of Documentary Evidence)

alive, and subject to the process of the Court and capable of giving evidence attested

required by law to bo

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person

Proof where no attesting witness found

by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested 71 If the attesting witness denies or does not recollect the execution Proof when

70 The admission of a party to an attested document of its execution Admission of execution by

of the document, its execution may be proved by other evidence 72 An attested document not required by law to be attested may

party to attested document.

73 In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved although that signature, or proved

attesting witness denses the execution

Proof of document

writing or seal has not been produced or proved for any other purpose The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person

n. t required by law to be attested Con partson of signature writing or seal with others admitted

'[This section applies also, with any necessary modifications, to finger impressions ?

PUBLIC DOCUMENTS

74 The following documents are public documents -

(I) documents forming the acts or records of the acts-(1) of the sovereign authority.

Public documents.

(11) of official bodies and tribunals, and

(111) of public officers legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

(2) public records kept in British India of private documents

75 All other documents are private

Privat-

'The paracraph was added to a 73 by the Ind an Evidence Act 16 General Act Vol. V

(Part II - On Proof. Chapter V .- Of Documentary Evidence)

Certified copies of public documents 76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies

Explanation—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies

78. The following public documents may be proved as follows -

- Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government, by the records of the departments, certified by the heads of those departments respectively,
 - or by any document purporting to be printed by order of any such Government;
- (2) the proceedings of the Legislatures,
 - by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government
- (3) proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,
 - by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer
- (4) the Acts of the Executive or the proceedings of the Legislature of a foreign country,—by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council;

Proof of documents; by production of cirtified copies. Proof of other official documents (Part II -On Proof Chapter V -Of Documentary Evidence)

- (5) the proceedings of a municipal body in British India,by a copy of such proceedings, certified by the legal keeper
 - thereof, or by a printed book purporting to be published by the authority of such body
- (6) public documents of any other class in a foreign country,
 - by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country

PRESUMPTIONS AS TO DOCUMENTS

79 The Court shall presume every document purporting to be a Presumption certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports of certified to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor General in Council, to be genuine

genumeness

Provided that such document is substantially in the form and purports to be executed in the minner directed by law in that behalf

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it,

the official character which he claims in such paper

80. Whenever any document is produced before any Court pur- Presumption porting to be a record or memorandum of the evidence or of any part as to of the evidence, given by a witness in a judicial proceeding or before produced any officer authorized by law to take such evidence or to be a statement as record of or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume-

that the document is genuine, that any statements as to the cir cumstances under which it was taken, purporting to be made by the person signing it, are true and that such evidence, statement or confession was duly taken

81. The Court shall presume the genumeness of every document Presumption purporting to be the London Gazette or the Gazette of India or the auto Government Gazette of any Local Government or of any colony, news dependency or possession of the British Crown, or to be a newspaper or papers journal, or to be a copy of a private Act of Parliament printed by the Acts of Queen's Printer and of every document purporting to be a document Parliament directed by any law to be lept by any person, if such document is kept documents

Cazettes.

(Part II .- On Proof. Chapter V - Of Documentary Evidence)

substantially in the form required by law and is produced from proper custody.

Presumption
as to
document
admissible
in Englan i
without proof
of seal or
signature

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland

Presumption as to maps or plans made by authority of Government Presumption as to collec tions of laws and reports

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate, but maps or plans made for the purposes of any cause must be proved to be accurate.

84. The Court shall presume the genumeness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to powers of attorney

of decisions

85. The Court shall presume that every document purporting to be a power of-attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, British Consul or Vice Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated

Presumption as to certified any less of f reign judi cust records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India '[in or for] such country to be the manner commonly in use in that country for the certification of copies of judicial records

²[An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as

Acts Vol V

These words in a 26 were substituted for the words ' resident in' by the Indian ' story still - [193] a B Graceal Act, 101 IV of the Indian Evidence Act 1899 (V of the Indian Evidence Act 1899 (V of 8 of the Indian Evidence Act 1872)

(Part II - On Proof. Chapter V - Of Documentary Evidence.)

defined in section 3, clause (40), of the General Clauses Act, 1897. shall for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place.]

87. The Court may presume that any book to which it may refer for Presumption information on matters of public or general interest, and that any as to books, maps and published map or chart, the statements of which are relevant facts charts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be as to addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent, but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

telegraphic messages.

89. The Court shall presume that every document, called for and Presumption not produced after notice to produce, was attested, stamped and executed in the manner required by law.

as to due execution. ete , of documents not produced Presumption

documents

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and thirty years every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation .- Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be, but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable

This explanation applies also to section 81.

Illustrations

(a) A has been in possession of landed property for a long time. He produces from

Part II -- On Proof Chapter VI -- Of the Exclusion of Otal by Documentary Evidence)

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE

Evidence of terms of contracts grants and other disposi tions of pro perty reduced to form of document.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence 1 shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its con tents in cases in which secondary evidence is admissible under the provisions hereinhefore contained

Exception 1 -When a public officer is required by law to be ap pointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved

Exception 2 -Wills [admitted to probate in British India] may be proved by the probate

Explanation 1 -This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more docu ments than one

Explanation 2 -Where there are more originals than one, one original only need be proved

Explanation 3 - The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact

Illustrations

- (a) If a contract be contained in several letters all the letters in which it is contained
- must be proved

 (b) If a contract is contained in a bill of exchange the bill of exchange must be proved

The evidence is admissible

. 7, infra.

⁽e) A gives B a receipt for money paid by B Oral evidence is offered of the payment

Where however, a Cruminal Court finds that a confession or other statement of an 'Where however, a Criminal court mass that a contession or other statement of an accused person has not been for orded in manner prescribed evidence may be taken that the recorded statement was duly male-see the Code of Criminal Procedure, 1933 (Act V of 1920), a 533 General Nets Vol 7. These words in a 91 fzeepf on 9, were substituted for the words 'under the Inlian Succession Act by the Indian Principles (At Amendment Act (VVIII of 1972),

(Part II -On Proof Chapter VI -Of the Exclusion of Otal by Documentary Lvidence)

92 When the terms of any such contract, grant or other disposition Exclusion of of property, or any matter required by law to be reduced to the form of evidence of oral agreea document, have been proved according to the last section, no evidence ment of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms

Proviso (1) -Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto such as fraud intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law

Proviso (2) -The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms may be proved. In considering whether or not this proviso applies the Court shall have regard to the degree of formality of the document

Proviso (3) -The existence of any separate oral agreement consti tuting a condition precedent to the attaching of any obligation under any such contract grant or disposition of property may be proved

Proviso (4) -The existence of any distinct subsequent oral agree ment to rescind or modify any such contract grant or disposition of pro perty, may be proved except in cases in which such contract, grant or disposition of property is by law required to be in writing or has been registered according to the law in force for the time being as to the registration of documents

Proviso (5) -Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved

Provided that the annexing of such incident would not be repugnant to or inconsistent with the express terms of the contract

Proviso (6) -Any fact may be proved which shows in what manner the language of a document is related to existing facts

Illustrat ons

(a) A policy of insurance is efficied on goods in sh ps from Calcutta to London

y st Mar an ot be troved

The words want or fa lure were b t t ted for the words wan of failure by 8 of the Indian Evidence Act Amendment Act (AVIII of 1872) infra

(Part II.—On Proof. Chapter VI—Of the Exclusion of Oral by Documentary Evidence)

(c) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved (d) A enters into a written contract with B to work certain mines, the property of B,

upon certain terms. A was induced to do so by a misrepresentation of B s as to their alue. This fact may be proved

(e) A institutes a suit against B for the specific performance of a contract, and also

(e) A institutes a sust against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law payment, the goods

r in these

Re 200
lo partial
board - gularly stamped agreement, drawn up by an

on the subject of board A may not prove sending a receipt for the money B keeps

(1) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the cir cumstances under which it was delivered.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations

(a) A sarrose in week no to a 11 a hore to R for Pe 1 000 or Rs 1,500

acts which would show

94. When language used in a document is plain in itself, and when

of applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts

Illustration

A sells to B, by deed, "my estate at Rampur containing 100 bighás". A has an estate at Rampur containing 100 bighás. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

which

Exclusion of evidence to explain or amend ambiguous document.

Exclusion of evilence against application

application of document to existing facts,

Pykicnee as to document unmeaning in reference to existing facts. Part II -On Proof Chapter II -Of the Exclusion of Oral by Documentary Lvidence)

96. When the facts are such that the language used might have Evidence as been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to

to application of language which can apply to one only of several persons.

Illustrations

(a) A agrees to sell to B, for Rs 1 000 'my white horse A has Evidence may be given of facts which show which of them was meant A has two white horses (b) A agrees to accompany B to Haidarabad Lvidence may be given of facts show ing whether Haidarabad in the Dekkhan or Haidarabad in Sind was meant

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply

Fyidence as to application of language to one of two sets of facts. to neither of which the whole correctly

Illustration

applies. A agrees to sell to B my land at λ in the occupation of Y A has land at X, but not not occupation of Y, and he has land in the occupation of Y, but it is not at λ Evidence may be given of facts showing which he meant to sell

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense

I vidence as to meaning of illegible characters,

Illustration

A, a sculptor, agrees to sell to B all my mod A has tools Evidence may be given to show which he meant to sell A has both models and modelling

99. Persons who are not parties to a document, or their represen tatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Who may give evidence of agreement ANLANDS terms of document.

Illustration

A and B make a contract in writing that B shall sell A certain cotton to be paid for on delivery At the same time they make an oral agreement that three months credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests

100. Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865)1 as to the construction of wills

Saving of provisions of ladian Succession Act relating to wills.

(Part III -Production and Effect of Evidence Chapter VII -Ot the Burden of Proof)

PART III

PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER VII

OF THE BURDEN OF PROOF

Burden of proof

101 Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person

Illustrations (a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed

A must prove that B has committed the crime (b) I desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts and which B denies to be true A must prove the existence of those facts

On whom burden of proof he-

102 The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side

Illustrations

session and which as A asserts was left to

would be entitled to retain his possession

which A denies

but B says that it was obtained by fraud

If no evidence were given on either side A would succeed as the bond is disputed and the fraud is not proved

Burden of proof as to particular

> Burden of proving fact

to make

Therefore the burden of 1 roof is on B 103 The burden of proof as to any particular fact lies on that per son who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person

Illustration

*(a) A prosecutes B for theft and wishes the Court to believe that B admitted the theft to C A must prove the admission B wishes the Court to believe that at the time in question he was elsewhere. He must prove it.

104 The burden of proving any fact necessary to be proved in or der to enable any person to give evidence of any other fact is on the per to be proved son who wishes to give such evidence

eridence admissible. Sie in the Act as published in Cazette of India 1872 Pt IV, p 1 There is no illustration (b)

(Part III - Production and Effect of Tridence Chapter VII - Of the Burden of Proof

Mustrations

(a) A wishes to prove a dying declaration by B A must prove B s death
(b) A wishes to prove, by secondary evidence, the contents of a lost document A must prove that the document has been lost

105. When a person is accused of any offence, the burden of proving Burden of the existence of circumstances bringing the case within any of the Gen- proving that eral Exceptions in the Indian Penal Code, or within any special ex- accused ception or proviso contained in any other part of the same Code, or in cones within any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances

Illustrations

/ \ A 1 4 ... 1 at a reason of unsoundness of mind, he did not

by grave and sudden provocation, he was

1 provides that whoever, except in the case provided for by section 335 voluntarily causes grievous hurt, shall be subject to certain punishments

A is charged with voluntarily causing grievous hurt under section 325 The burden of proving the circumstances bringing the case under section 335 lies on A

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him

Illustrations

(a) When a person does an act with some intention other than that which the charac ter and circumstances of the act suggest the burden of proving that intention is upon him (b) A is charged with travelling on a railway without a ticket The burden of proving that he had a ticket is on him

107. When the question is whether a man is alive or dead, and it Burden of is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it

108. 2[Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, slive who has the burden of proving that he is alive is 2[shifted to] the person who been beard of for affirms it

109. When the question is whether persons are partners, landlord Burden of and tenant, or principal and agent, and it has been shown that they have relationship

Burden of proving fact especially within 1-nowledge.

proving death of person known to have been alive withm thirty years. Burden of proving that seven years.

General Acts Vol I

These words in a 100 were substituted for the original words "When' and "on" respectively, by the Indian Fudence Act Amendment Act (VIII of 1872), a 9, infra.

(Part III - Production and Effect of Evidence Chapter VII -Of the Burden of Proof)

in the cases of partners. landlord and tenant. principal and agent. Purden of proof as to

ownership

Proof of

good faith in

transactions where one

party is in relation of active

confidence

been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms at

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence

Illustrations

tue ratuer

Birth during marringe conclusion proof of legitimacy

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man unless it can be shown that the parties to the marriage had no access to each other at any time when be could have been begotten

Proof of ecssion of territory

113. A notification in the Gazette of India that any portion of British territory has been ceded to any Native State, Prince or Ruler.1 shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification

Court may Presume existence of certain facts.

114 The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case

Illustrations

The Court may presume-

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession,

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars (e) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good

consideration. (d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence,

(Part III .- Production and Effect of Evidence. Chapter VII .- Of the Burden of Proof. Chapter VIII .- Estoppel)

cases. oduced, be un favourable to the Leison who withholds it,

(h) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given would be unfavourable to him (1) that when a document creating an obligation is in the hands of the obligor, the

g, in considering

soon after it was tinually receiving

ed for causing a B, a rerson of equally good character, who also took part in the arrangement, describes precisely what was done and adm to and evoly no the common estalector of A

r on a contract of small importance on which he is sued, but which might also injure the feelings

> a question which he is not compelled se loss to him in matters preconnected

> the obligor, but the circumstances of

CHAPTER VIII

ESTOPPEL

115. When one person has, by his declaration, act or omission, in. Estoppel tentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing

Hlustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that at the time of the sale, he had no title. He must not be allowed to prove his want of title

116. No tenant of immoveable property, or person claiming through Estoppel of such tenant, shall, during the continuance of the tenancy, be permitted

Clapter IX - Of Wetnesses)

to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property, and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such

land of

bi l cf

excl ange bailee or

licensee

wife of

eriminal trial.

Jodges and

licensee of person in

possession

Estoppel of acceptor of

possession at the time when such license was given 117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced authority to make such bailment or grant such license

Explanation (1) -The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn

Explanation (2) -If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor

CHAPTER IX

OF WITNESSES

118 All persons shall be competent to testify unless the Court con Who may testify siders that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years extreme old age, disease, whether of body or mind, or any other cause

of the same kind Explanation -A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them 119 A witness who is unable to speak may give his evidence in any

Dami other manner in which he can make it intelligible as by writing or by witnesses. signs, but such writing must be written and the signs made in open

Court Tvidence so given shall be deemed to be oral evidence 120 In all civil proceedings the parties to the suit, and the husband Parties to or wife of any party to the suit, shall be competent witnesses In cri civil suit, and their wives or minal proceedings against any person, the husband or wife of such per husbands. son, respectively, shall be a competent witness Husband or

person under 121 No judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any ques Magistrate,

(Part III -Production and Effect of Evidence Chapter IX -Of Witnesses)

tions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate, but he may be examined as to other matters which occurred in his presence whilst he was so acting

Illustrations . .

superior Court (c) A is accused before the Court of Session of attempting to murder a police officer whilst on his trial before B a Sessions Judge B may be examined as to what occurred

122 No person who is or has been married shall be compelled to dis close any communication made to him during marriage by any person during to whom he is or has been married, nor shall he be permitted to disclose marriage any such communication, unless the person who made it, or his representa tive in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other

Communi

123 No one shall be permitted to give any evidence derived from Evidence unpublished official records relating to any affirms of State, except with as to affairs the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit

124 No public officer shall be compelled to disclose communications Official made to him in official confidence, when he considers that the public in terests would suffer by the disclosure

communi cations.

125 No Magistrate or Police officer 2 shall be compelled to say Information whence he got any information as to the commission of any offence and no Revenue officer shall be compelled to say whence he got any informa tion as to the commission of any offence against the public revenue

as to commiss on of offences.

Explanation - "Revenue officer" in this section means any officer employed in or about the business of any branch of the public revenue.

126 No barrister attorney, pleader or valid shall at any time be Protespermitted, unless with his client's express consent, to disclose any com munication made to him in the course and for the purpose of his em ployment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his

stonaj com muni ation.

17% L

^{1 . 125} by the Indian Evidence Act (1872) nder s 125 of this Act have been of mil tary pol ce in Burma see the Code See also the revised ed tion the Government of Burma.

(Part III -Production and Effect of Evidence Clapter IX -Of Witnesses)

professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment

Provided that nothing in this section shall protect from disclosure-

- any such communication made in furtherance of any ¹[illegal] purpose
- (2) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commence ment of his employment

It is immaterial whether the attention of such barrister, ²[pleader] attorney or vakil was or was not directed to such fact by or on behalf of his client

Explanation —The obligation stated in this section continues after the employment has ceased

Illustrations

(a) A a client says to B an attorney— I have committed forgery and I wish you to defend me

As the defence of a man known to be guilty is not a criminal purpose this communication is protected from disclosure

(b) A a client says to B an attorney— I wish to obtain possession of property by the use of a forged deed on which I request you to sue The communication being made in furtherance of a criminal purpose is not protected

from disclosure

(c) A being charged with embezziement retains B an attorney to defend him In
the course of the proceedings B observes that an entry has been made in As account
book charging A with the sum said to have been embezzied which entry was not in the

book at the commencement of his employment.

This being a fact observed by B in the course of his employment showing that a fraud
has been committed since the commencement of the proceedings, it is not protected from
disclosure.

127 The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils

Section 126

to apply to

interpreters etc Privilege not

waived by

evidence

volunteering

Confidential

comt unica-

128 If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126, and, if any party to a suit or proceeding calls any such barrister, "[pleader], attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose

129 No one shall be compelled to disclose to the Court any confiden tial communication which has taken place between him and his legal

^{*}This word in a 126 was substituted for the or ginal word criminal by the Indian Evidence Act Amendment Act (VVIII of 1872) a 10 infra of 1872 a 10 days inserted by the Indian Evidence Act Amendment Act (XVIII of 1872 a 10 days.

(Part III - Production and Effect of Luidence Chapter IX - Of Witnesses Chapter A -Of the Examination of Hitnesses)

professional adviser, unless he offers himself as a witness, in which case tions with he may be compelled to disclose any such communications as may appear advisers to the Court necessary to be known in order to explain any evidence which he has given, but no others

130 No witness who is not a party to a suit shall be compelled to Production produce his title deeds to any property or any document in virtue of of witness which he holds any property as pledgee or mortgagee or any document not a party the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the produc tion of such deeds or some person through whom he claims

131 No one shall be compelled to produce documents in his posses sion, which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents another to their production

Production of docu ment which person faring DOSSESSION could refuse to produce

132 A witness shall not be excused from answering any question as Witness not to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such ques tion will criminate, or may tend directly or indirectly to criminate, such witness or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind

excused from answer ing on groun I that answer will crimi inte

Provided that no such answer, which a witness shall be compelled Proviso to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer

133 An accomplice shall be a competent witness against an accused Accomplice person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice

134 No particular number of witnesses shall in any case be required Number of for the proof of any fact

CHAPTER X

OF THE EXAMINATION OF WITNESSES

135 The order in which witnesses are produced and examined shall Order of probe regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court

du tan and examination of witnesses.

Γ1872: Act I. Chapter X -Of the

(Part III -Production and Effect of Evidence Examination of Witnesses)

Judge to 136 When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner admissibility the alleged fact, if proved, would be relevant, and the Judge shall admit the evidence if he thinks that the fact, if proved, would be rele vant and not otherwise

> If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking

> If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact

Illustration

(a) It is proposed to prove a statement about a relevant fact by a person alleged to

· ng to prove the

to be lost using to produce

stolen

The Court may e den al of the

possession is proved or permit the denial of possession to be proved before the property is identified is incensive (d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermed ate facts (B C and D) which must be shown to exast before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B C and D is proved or may require proof of B C and D before permitting proof of A.

137 The examination of a witness by the party who calls him shall

be called his examination in chief The examination of a witness by the adverse party shall be called his

cross examination

The examination of a witness, subsequent to the cross examination by the party who called him, shall be called his re examination

138 Witnesses shall be first examined in chief, then (if the adverse party so desires) cross examined, then (if the party calling him so desires) re examined

The examination and cross examination must relate to relevant facts. but the cross examination need not be confined to the facts to which the witness testified on his examination in chief

decide as to of evidence.

Examina tion in chief

Cross ex amination

Re examina \$10B Order of

examina tions

(Part III -Production and Lifect of Evidence Chapter X-Of the Examination of Witnesses)

The re examination shall be directed to the explanation of matters referred to in cross examination, and, if new matter is, by permission of the Court, introduced in re examination, the adverse party may further cross examine upon that matter

139. A person summoned to produce a document does not become a Cross examwitness by the mere fact that he produces it and cannot be cross exam-ination of ined unless and until he is called as a witness

person cal ed to produce a document. Witnesses to character. 141 Any question suggesting the answer which the person putting Leading

140 Witnesses to character may be cross examined and re examined

question it wishes or expects to receive is called a leading question 142 Leading questions must not, if objected to by the adverse party. When they be asked in an examination in chief, or in a re examination, except with asked.

the permission of the Court The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved

143 Leading questions may be asked in cross examination

When they may be asked 10 writing

144 Any witness may be asked, whilst under examination, whether I vitence any contract, grant or other disposition of property, as to which he is as to matters giving evidence was not contained in a document and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court ought to be produced the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it

Explanation -A witness may give oral evidence of statements made by other reasons about the contents of documents if such statements are in themselves relevant facts

Mustration

The question is whether A assaulted B C deposes that le heard A say to D— B wrote a letter accu in, me of theft and I will be revenged on him. This statement is relevant as showing As motive for the assault and evidence may be given of it though no other evidence is given about the letter

1145 A witness may be cross examined as to previous statements Cross-ex made by him in writing or reduced into writing and relevant to matters amount on as in question, without such writing being shown to him or being proved, to previous statements but if it is intended to contradict him by the writing his attention must, in writing

As to the application of a 145 to police duries are the Code of Criminal Procedure. 1893 (Act V of 1898) s 172 General Acts Vol V

(Part III .- Production and Effect of Lindence. Examination of Witnesses)

Chapter X .- Of the

before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him 146. When a witness is cross examined, he may, in addition to the

questions hereinbefore referred to, be asked any questions which tend-(1) to test his veracity,

Questions lawful in

cross ex amination.

When wit ness to be

Court to decide when

nuestion

shall be asked and

auswer

Question

not to be asked

without reasonab e ground.

compelled to angrer

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto

148 If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the when witness compelled to witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations -

- (1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies
- (2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a cha racter, that the truth of the imputation would not affect. or affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testi-
- (3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence (4) the Court may, if it sees fit, draw, from the witness's refusal
- to answer, the inference that the answer if given would be unfavourable

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded

Illustrations

(a) A barnister is instructed by an attorney or vakil that an important witness is a dákáit. This is a reasonable ground for asking the witness whether he is a dákáit.

(Part III .- Production and Effect of Evidence. Chapter X -Of the Examination of Weinesses)

(b) A pl the informar statement (c) A wi (d) A w

of life and ground for asking him it he is a dakait

150. If the Court is of opinion that any such question was asked Procedure without reasonable grounds, it may, if it was asked by any barrister, case of pleader, vakil or attorney, report the circumstances of the case to the question High Court or other authority to which such barrister, pleader, valid without or attorney is subject in the exercise of his profession

of Court in being asked reasonable grounds. Indecent

151. The Court may forbid any questions or inquiries which it re gards as indecent or scandalous, although such questions or inquiries may scandalous have some bearing on the questions before the Court, unless they relate questions to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed

152. The Court shall forbid any question which appears to it to be Questions intended to insult or annoy, or which, though proper in itself, appears insult or to the Court needlessly offensive in form

intended to annov

153. When a witness has been asked and has answered any question Ficiasion which is relevant to the inquiry only in so far as it tends to shake his to contradict credit by injuring his character, no evidence shall be given to contradict answers to him, but, if he answers falsely, he may afterwards be charged with giv- testing ing false evidence

of evidence questions veracity

Exception I -If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction

Exception 2 -If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted

Illustrations

(a) A claim against an underwriter is resisted on the ground of fraud The claimant is asked whether, in a former transaction he had not made a fraudulent L, - 11 4 - ve +

dishonesty

y

He denies it.

• redit.

giving fales evidence

e -- bea with

(Part III —Production and Liffect of Lividence Chapter X—Of the Examination of Witnesses)

(d) A is asked whether his family has not had a bloodfeud with the family of B against thom be gives evidence.
He denies it He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness

Impeaching credit of witness 154 The Court may in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross examin ation by the adverse party

155 The credit of a witness may be impeached in the following ways by the adverse party or, with the consent of the Court, by the party who calls him —

- by the evidence of persons who testify that they, from their hnowledge of the witness believe him to be unworthy of credit.
- (2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt in ducement to give his evidence
- (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.
- (4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally im moral character

Explanation —A witness declaring another witness to be unworthy of credit may not upon his examination in chief, give reasons for his belief but he may be asked his reasons in cross examination and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence

Illustrations

(a) A sues B for the price of goods sold and delivered to B C says that A delivered the goods to B Evidence is offered to show that on a previous occasion he said that he had not

at A had given B the wound of which he died previous occas on C said that the wound was

Q restrone tending to corroborate evidence of relevant fact 156 When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other cir cumstances which he observed at or near to the time or place at which

This or accepted in s 155 para (2) was substituted for the original word had by the Indian Evidence Act Amendment Act (XVIII of 1872) s 11 infra

249

Chapter X -Of the (Past III -Production and Effect of Evidence Examination of Witnesses \

such relevant fact occurred, if the Court is of opinion that such circum stances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies

Illustration

he took part He describes on his way to and from the

to corroborate his evidence

as to the robbery itself

157. In order to corroborate the testimony of a witness, any form er statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally com petent to investigate the fact, may be proved

statements of witness may be proved to corroborate later testi mony as to same fact. ters may be proved in

Former

158 Whenever any statement, relevant under section 32 or 33 is What mat proved, all matters may be proved either in order to contradict or to cor roborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross examination the truth of the matter suggested

connection with proved *tatement relevant t nder

159 A witness may while under examination refresh his memory Refreshing by referring to any writing made by himself at the time of the transac tion concerning which he is questioned or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory

Section 32 or 33. memory

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read at he knew at to be correct

Whenever a witness may refresh his memory by reference to any when witdocument, he may, with the permission of the Court, refer to a copy of ness may use such document

copy of document to refresh memory

Provided the Court be satisfied that there is sufficient reason for the

non production of the original

An expert may refresh his memory by reference to professional treatises

160 A witness may also testify to facts mentioned in any such Testimony to document as is mentioned in section 159, although he has no specific re collection of the facts themselves, if he is sure that the facts were cor- mentioned in rectly recorded in the document

facts stated m document section 159

(Part III -- Production and Effect of Evidence Examination of Witnesses) Chapter X -Of the

Illustration

A book keeper may testify to facts recorded by him in books regularly kept in the course of business if he knows that the books were correctly kept, although he has forgot ten the particular transactions entered

'161. Any writing referred to under the provisions of the two last

Right of adverse party as to writing used to refresh memory

preceding sections must be produced and shown to the adverse party if he requires it such party may, if he pleases, cross examine the witness thereupon

162. A witness summoned to produce a document shall, if it is in

Production of does in rents.

162. A witness summoned to produce a document shall, if it is in did not in rents.

In spossession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility the validation of any such objection shall be decided on by the Court

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its

Tr nelation of docu admissibility

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code 2

Giving as evidence, of document

calted for and produced on

other party notice to produce, and such document is produced and in spected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so 164 When a party refuses to produce a document which he has

163. When a party calls for a document which he has given the

notice
Using, as
evidence, of
document
production of
which was
refused on
notice.

164 When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court

Illustration

calls for tents B A, or in

Judge a power to put questions or order production.

165 The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant, and may order the production of any document or thing and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross

As to the application of a 161 to police diaries see the Code of Criminal Procedure, 1893 (Act V of 1899) a 172 General Act, Vol. V General Acts, Vol. V

(Part III-Production and Effect of Evidence Chapter X-Of the Examination of Witnesses Chapter XI -Of Improper Admission and Rejection of Evidence

examine any witness upon any answer given in reply to any such question

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party, nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149, nor shall be dispense with primary evidence of any document, except in the cases hereinbefore excepted

166 In cases tried by jury or with assessors, the jury or assessors, Power of may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper

jury or assessors to put a restrons

CHAPTER XI

O1 IMPROLER ADMISSION AND REJECTION OF EVIDENCE

167 The improper admission or rejection of evidence shall not be Nonew trid ground of itself for a new trial or reversal of any decision in any case, for in proper if it shall appear to the Court before which such objection is raised that, rejection of independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

(Schedule -Lnactments repealed)

SCHEDULE

ENACTMENTS REPEALED (See section 2)

humber and year	Title	Latent of repeal	
Stat 28 Geo 111 Cap 57 1	For the further regulation of the trial of persons accused of certain offences committed in the Fast Indices for repealing so much of an Act made in the twenty fourth year of the reign of His present Mijesty (initialed An Act for the better	relates to Courts of Justice in the East Indies	
	as requires the servants of the East India. Comp my to deliver inventories of their estates and effects for rendering the laws more effectual against persons unlawfully resorting to the hast Indies and for tit, more every proof in certain cases of decids an I writings executed in Gr at Britum or India	ļ	
Stat 14 & 10 Vict, Cap 99 2	To amend the Law of Evidence	Section 11 at d so much of section 19 as re lates to British India	
Act XV of 1852	To amend the Law of Fudence	So much as has not been heretofore re pealed	
Act XIX of 1853 ³	To smend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency	Section 19	
Act II of 1855 .	For the further improvement of the Law of Evidence	So much as has not been heretofore re pealed	
Act XXV of 1861	For simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter	Section 237	
10 0 0 0			

The East Invia Company Act 17 6 Coll Stat Vo I should be should be

1872 : Act III]

THE SPECIAL MARRIAGE ACI, 1872

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- 2 Conditions upon which marriages under Act may be celebrated
- 3 Appointment of Marriage Registrars
- 4 One of the parties to intended marriage to give notice to Registrar
- 5 Notice to be filed and copy entered in the Marriage Notice Book
- 6 Objection to marriage
- 7 Procedure on receipt of objection Objector may file suit
- 8 Certificate of filing of suit to be lodged with Registrar
- 9 Court may fine when objection not reasonable
- 10 Declaration by parties and witnesses
- 11 Marriage how to be solemnized
- 12 Place where marriage may be solemnized
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PIRST SCHEDULE -- NOTICE OF MARRIAGE

SICOND SCHEDULE -Declarations to be made by the Brideceom

THIRD SCHI'DULE —REGISTERS S CERTIFICATE
FOURTH SCHIEDULE —[Repealed]

(Schedule - Lnactments repealed)

SCHEDULE

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	as requires the servants of the East India Company to delace inventores of their estates and effects, for rendering the laws more effectual against persons unlawfully resorting to the East Indies, and for the more easy proof in certain carse of deeds and writings executed in Great Britism or India		
Stat 14 & 15 Vict, Cap 99 2	To amend the Law of Evidence .	Section 11 and so much of section 19 as re- lates to British India	
Act XV of 1852	To amend the Law of Evidence	So much as has not been beretofore re- pealed	
Act XIX of 18533 .	To smend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency	Section 19	
Act II of 1855	For the further improvement of the Law of Evidence	So much as has not been beretofore re- pealed,	
Act XXV of 1861* .	For simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter	Section 237.	

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THE SPECIAL MARRIAGE AC1, 1872

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ACT No III or 1872 1

[22nd March 1872]

An Act to provide a form of Marriage in certain cases

Preamble

Whereas it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Silh or Jaina religion, and to legalize certain marriages the validity of which is doubtful. It is hereby enacted as follows —

Local extent,

Conditions
upon which
n arriages
under Act
may be cele
beated.

1 This Act extends to the whole of British India 2

[Commencement] Rep by the Repealing Act, 1874 (XVI of 1874)

- 2 Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muhammadan, or the Parsi or the Buddhist, or the Sikh or the Jaina religion, upon the following conditions—
 - neither party must, at the time of the marriage, have a hushand or wife living
 - (2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar
 - (3) each party must, if he or she has not completed the age of twenty one years, have obtained the consent of his or her father or guardian to the marriage
 - (4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal

1st Proviso -No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying

Short title The Special Marriage Act 1872 See the Indian Short Titles Act, 1897

, **

2nd Proviso -No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor who stands to each of them in a nearer relationship than that of great great grand father or great great grand mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other

3 The Local Government may appoint one or more Registrars under Appointment this Act, either by name or as holding any office for the time being, Registrars for any portion of the territory subject to its administration The officer so appointed shall be called Registrar of Marriages under Act III of 1872," and is hereinafter referred to as "the Registrar" The portion of territory for which any such officer is appointed shall be deemed his district 1

4 When a marriage is intended to be solemnized under this Act, one One of the of the parties must give notice in writing to the Registrar before whom tended mar it is to be solemnized

ringe to give notice to Re gustrar

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given

Such notice may be in the form given in the first schedule to this Act

5 The Registrar shall file all such notices and keep them with the Notice to be records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the Marriage Notice Book under Act III of 1872," and such book shall be open at all reasonable times without fee, to all persons desirous of inspecting the same

filed an l copy entered in th Marriage Notice Book.

6 Fourteen days after notice of an intended marriage has been given Objection to under section 4, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned

DIAFFIAGE

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clause (1) (2), (3) or (4) of section 2

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection and shall be signed by him or on his behalf

Proceedire on receipt of ob rection

7. On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court

person presenting it a certificate to the effect that such suit has been

filed If such certificate be lodged with the Registrar within fourteen

days from the receipt of notice of objection, if there be a Court of com petent jurisdiction open at the time, or, if there be no such Court open

Objector may file suit

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clause (1). (2), (3) or (4) of section 2 Certificate of 8 The officer before whom such suit is filed shall thereupon give the

filing of suit to be lodged with Regis trar

> at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given and the period allowed by law for appeals from such decision has elapsed or if there be an appeal from such decision till the decision of the Appellate Court has been given If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more

of the conditions prescribed in clause (1), (2), (3) or (4) of section 2, such marriage may be solemnized If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clause (1), (2)

Co ort may fne when objection not (3) or (4) of section 2 the marriage shall not be solemnized 9 Any Court in which any such suit as is referred to in section 7 is filed may if it shall appear to it that the objection was not reasonable and bona fide, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the

reasonable Declaration

intended marriage 10 Before the marriage is solemnized, the parties and three witness es shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act If either party has not

by parties and wat Desses

completed the age of twenty one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and in every case, it shall be countersigned by the Registrar 11 The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be

Marriage how to be nolemnized

solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I, [A], take thee, [B], to be my lawful wife (or husband) "

12. The marriage may be celebrated either at the office of the Place where Registrar or at such other place, within reasonable distance of the office may be of the Registrar, as the parties desire Provided that the Local Govern- solema zed. ment may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon 1

13. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the "Marriage Certificate Book under Act III of 1872," in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses

Certificate of

2 13A. The Registrar shall send to the Registrar General of Births. Deaths and Marriages for the territories within which his district is situate, at such intervals as the Governor General in Council from time entries in to time directs, a true copy certified by him, in such form as the certificate Governor General in Council from time to time prescribes, of all entries made by him in the said marriage-certificate book since the last of such intervals 4

Transn ission of certified copies of book to the Registrar Ceneral of Burths. Deaths and Marriages. Tees.

14. The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act 5

The Registrar may, if he think fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable

The said Marriage Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract

For rules framed under this section for-

⁽a) Assum see Assum Rules Vianual Ed 1893 p 27
(b) United Provinces of Agra and Oudh see not hation quoted at page 42 of the
North Western Provinces and Oudh List of Jonal Rules and Orders Ed 2S 13A was inserted by s 29 of the Births Deaths and Marriages Pegistration Act

^{*} For scales of fees to be paid to I egistrars of Marma es prescribed by-

FIRST SCHEDULE

(See section 4)

NOTICE OF MARRIAGE

To , a Registrar of Marriages under Act III of 1872 for the

I hereby give you notice that a marriage under Act III of 1872 is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say)—

say) —					
Names	Condition	Runk or profess on	Age	Dwell ng- pl-ce	Length of residence
АВ	Unmarried Bidower	Lindowner	Of full age		23 days
СD	Spinster		V nor		ı

Witness my hand, this

day of

(Signed) A B

SECOND SCHEDULE

(See section 10)

DECLARATION TO BE MADE BY THE BRIDEGEOOM

- I, A B, hereby declare as follows -
- 1 I am at the present time unmarried vol II.

- 2 I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion
 - 3 I have completed my age of eighteen years
- 4 I am not related to \check{C} D [the bride] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said C D is subject and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal
- [And when the bridegroom has not completed his age of twenty one years
- 5 The consent of my father [or guardian, as the case may be] has been given to a marriage between myself and C D, and has not been revoked J.
- 6 I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be true, I am liable to imprisonment, and also to fine

(Signed) A B [the bridegroom]

DECLARATION TO BE MADE BY THE BRIDE

- I, C D, hereby declare as follows -
- 1 I am at the present time unmarried
- 2 I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jama religion
 - 3 I have completed my age of fourteen years
- 4 I am not related to A B [the bridegroom] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said A B is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872 render a marriago between us illegal

[And when the bride has not completed her age of twenty one years, unless she is a widow

- 5 The consent of M N, my father [or guardian, as the case may be] has been given to a marriage between myself and A B and has not been revoked]
- 6 I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine

(Signed) C D [the bride]

Signed in our presence by the above named A B and C D

GH,
IJ, [three witnesses]
KL,

A B and C D:

[And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow: Signed in my presence and with my consent by the above-named

of the above-mentioned

M N, the father [or guardian] of the above-mentioned A B (or C D,

as the case may be).]

(Countersigned) E F,

Registrar of Marriages under Act III of 1872 for the District of

Dated the day of

18 .
———
THIRD SCHEDULE.

(See section 13.)

REGISTRAR'S CERTIFICATE.

I, EF, certify that, on the of appeared before me AB and CD, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III of 1872, and that a maniage under the said Act was solemnized between them in my presence,

(Signed) E F,

Registrar of Marriages under Act
111 of 1872 for the District of .
(Signed) A B.
C D.
G H.
I J.
K L.

Dated the day of

18 .

FOURTH SCHEDULE.

[Rep. by the Repealing Act, 1876 (.

THE INDIAN CONTRACT ACT, 1872

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Revocation of Authority

- 201 Termination of agency
- 202 Termination of agency where agent has an interest in subject matter
 - 203 When principal may revoke agent's authority
 - 204 Revocation where authority has been partly exercised
 - 205 Compensation for revocation by principal, or renunciation by agent

- 206 Notice of revocation or renunciation

207. Revocation and renunciation may be expressed or implied

- 208 When termination of agent's authority takes effect as to agent, and as to third persons 209 Agent's duty on termination of agency by principal's death or
- insanity
- 210 Termination of sub agent's authority

Agent's duty to Principal

- 211 Agent's duty in conducting principal's business
- 212 Skill and diligence required from agent
- 213 Agent's accounts
- 214 Agent's duty to communicate with principal
- 215 Right of principal when agent deals, on his own account, in business of agency without principal's consent
- 216 Principal's right to benefit gained by agent dealing on his own account in business of agency
- 217 Agent's right of retainer out of sums received on principal's ac count
- 218 Agent's duty to pay sums received for principal
- 219 When agent's remuneration becomes due
- 220 Agent not entitled to remuneration for business mis conducted
- 221 Agent's lien on principal's property

Principal's Duty to Agent

- 222 Agent to be indemnified against consequences of lawful acts
- 223 Agent to be indemnified against consequences of acts done in good faith
- 224 Non liability of employer of agent to do a criminal act
- 225 Compensation to agent for injury crused by principal's neglect

Effect of Agency on Contract with third persons

- 226 Enforcement and consequences of agent's contracts
- 227 Principal how far bound when agent exceeds authority
- 228 Principal not bound when excess of agent's authority is not sep-
- 229 Consequences of notice given to agent
- 230 Agent cannot personally enforce nor be bound by, contracts on behalf of principal
 - Presumption of contract to contrary
- 231 Rights of parties to a contract made by agent not disclosed
- 232 Performance of contract with agent supposed to be principal
- 233 Right of person dealing with agent personally liable.

234 Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable

235 Liability of pretended agent

236 Person falsely contracting as agent not entitled to performance

237 Liability of principal inducing belief that agent s unauthorized acts were authorized

238 Effect on agreement of misrepresentation or fraud by agent

CHAPTER XI

OF PARTNERSHIP

239 "Partnership" defined

240 Lender not a partner by advancing money for share of profits

241 Property left in business by retiring partner, or deceased part ner s representative

242 Servant or agent remunerated by share of profits not a partner

243 Widow or child of deceased partner receiving annuity out of profits not a partner

244 Person receiving portion of profits for sale of good will not a partner
245 Responsibility of person leading another to believe him a part

ner 246 Liability of person permitting himself to be represented as

a partner

247 Minor partner not personally liable but his share is

248 Liability of minor partner on attaining majority

249 Partner's liability for debts of partnership

250 Partner's liability to third person for neglect or fraud of co partner

251 Partner's power to bind co partners

252 Annulment of contract defining partner's rights and obliga-

253 Rules determining partner's mutual relations where no contract to contrary

254 When Court may dissolve partnership

255 Dissolution of partnership by prohibition of business

256 Rights and obligations of partners in partnership continued after expiry of term for which it was entered into

257 General duties of partners

(Preliminary.)

SECTIONS.

- Account, to firm, of benefit defined from transaction affecting partnership.
- 259. Obligations, to firm, of partner carrying on competing business.
- 260 Rerocation of continuing guarantee by change in firm.
- Non-liability of deceased partner's estate for subsequent obligations.
 - 262. Payment of partnership-debts, and of separate debts.
- 263. Continuance of partner's rights and obligations after dissolution.
- 264 Notice of dissolution,
- 265 Winding up by Court on dissolution or after termination.
- 266. Limited liability partnerships, incorporated partnerships, and joint stock companies.

SCHEDULE, -- ENACTMENTS REPEALED.

ACT No. IX or 1872.1

[25th April, 1872.]

THE INDIAN CONTRACT ACT, 1872.

Wheneas it is expedient to define and amend certain parts of the Preamble, law relating to contracts; It is hereby enacted as follows:

PRELIMINARY.

1. This Act may be called the Indian Contract Act, 1872.

Short title.

- 234 Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable
 - 235 Liability of pretended agent
 - 236 Person falsely contracting as agent not entitled to performance
 - 237 Liability of principal inducing belief that agent's unauthorized acts were authorized
 - 238 Effect, on agreement, of misrepresentation or fraud by agent

CHAPTER XI

OF PARTNERSHIP

- 239 "Partnership" defined "Firm" defined
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- 248 Liability of minor partner on attaining majority
- 249 Partner's liability for debts of partnership
- 250 Partner's liability to third person for neglect or fraud of co partner
 - 251 Partner's power to bind co partners
- 252 Annulment of contract defining partner's rights and obligations
- 253 Rules determining partner's mutual relations where no contract to contrary
 - 254 When Court may dissolve partnership
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Contract.

(Preliminary)

SECTIONS.

- 258. Account, to firm, of benefit derived from transaction affecting partnership.
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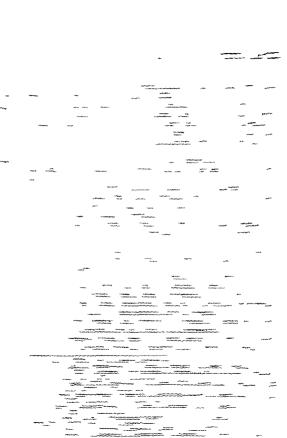
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(Preliminary Chapter I - Of the Communication, Acceptance and Resocution of Proposals)

(q) An agreement not enforceable by law is said to be void

(h) An agreement enforceable by law is a contract

(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract

(i) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable

CHAPTER I

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

3 The communication of proposals the acceptance of proposals, and Communica the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or re-revocation voking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it

tion accept ance and of proposals

4 The communication of a proposal is complete when it comes to Comminica the knowledge of the person to whom it is made

complete

The communication of an acceptance is complete,-

as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor.

as against the acceptor, when it comes to the knowledge of the pro poser

The communication of a revocation is complete,-

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it.

as against the person to whom it is made, when it comes to his knowledge

Illustrations

when the telegram is despatched. It is com-

B a revocation is complete as against B when the telegram is despatched and as again t A when it reaches him

5 A proposal may be revoked at any time before the communication Derocation of its acceptance is complete as against the proposer, but not after wards

ances.

(Preliminary)

Fxtent Commencement Enactments repealed It extends to the whole of British India 1, and it shall come into force on the first day of September, 1872

The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof, but nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act

Interprets tion clause 2 In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the con

- (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal
- (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted A proposal, when accepted 2 becomes a promise
- (c) The person making the proposal is called the promisor,"
 and the person accepting the proposal is called the "pro
 mises".
- (d) When, at the desire of the promiser, the promises or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.
- (e) Every promise and every set of promises, forming the con sideration for each other, is an agreement
- (f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises

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(Preliminary Clapter I - Of the Communication, Acceptance and Resocation of Proposals)

- (g) An agreement not enforceable by law is said to be void
- (h) An agreement enforceable by law is a contract
- (1) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract
- (i) A contract which ceases to be enforceable by law becomes youd when it ceases to be enforceable

CHAPTER I

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

3 The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it

Communica tion accept ance and revocation of proposals,

4 The communication of a proposal is complete when it comes to Communication the knowledge of the person to whom it is made

tion when complete

The communication of an acceptance is complete,-

as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor, as against the acceptor, when it comes to the knowledge of the pro-

poser

The communication of a revocation is complete,as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it.

as against the person to whom it is made, when it comes to his knowledge

Illustrations

It is com

ast B when

5. A proposal may be revoked at any time before the communication Revocation of its acceptance is complete as against the proposer, but not afterwards

BOCES

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(Chapter I .- Of the Communication, Acceptance and Revocation of Proposals.)

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations

A proposes, by r letter sent by post, to sell his house to B

B Accepts the proposal by a letter sent by post
A may revice his proposal at any time before or at the moment when B posts his
letter of acceptance, but not afterwards
B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards

Resocation 6. A proposal is revokedhow made.

must-

- (1) by the communication of notice of revocation by the proposer to the other party;
- (2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;
- (3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or
- (4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.
- 7. In order to convert a proposal into a promise, the acceptance

be absolute and unqualified;

- (2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accents the acceptance.
- 8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.
- 9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied,

Acceptance must be

absolute.

Acceptance by performing, condi tions, or recelving consideration.

Promises, express and implied

(Chapter II - Of Contracts, Voidable Contracts and Void Agreements)

CHAPTER II

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS

10 All agreements are contracts 1 if they are made by the free What agreeconsent of parties competent to contract, for a lawful consideration 2 ments are and with a lawful object, and are not hereby expressly declared to be hrov

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing 3 or in the presence of witnesses, or any law relating to the registration of documents

11 Every person is competent to contract who is of the age of Who are competent majority according to the law to which he is subject,4 and who is of to contract.

sound mind, and is not disqualified from contracting by any law to which he is subject 12 A person is said to be of sound mind for the purpose of making Whatisa a contract if, at the time when he makes it, he is capable of understand-

sound n and for the pur ing it and of forming a rational judgment as to its effect upon his poses of con tracting

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind

Illustrations

(a) A pat ent in a lunatic asylum who is at intervals of sound mind may contract during those intervals

(b) A same man who is delirious from fever or who is so drunk that he cannot under stand the terms of a contract or form a rational judgment as to its effect on his inter sta, cannot contract whilst such delir um or drunkenness lasts

13 Two or more persons are said to consent when they agree upon the same thing in the same sense

" Consent " defined

interests

See s 2 cl (h) supra

See s 25 expln 2 and s 102 infra

Set e 30 ergen 2 saus 300 entre

Set e 19, a 25 surfa the Ind an Copyright Act 1847 (A\ of 1847) a. 5 General

Acts Vol I it a Apprentices Act 1850 (XI\ of 1850) a. 8 stoid the Coursyance of

Land Act 1864 (V\\ of 1854) as 24 and 18 stoid the Workman B Hersch of Contract

Act 1893 (XIII of 1853) a 4 stoid the Correst Act 1855 (III of 1855) as 6 and 7

General Acts Vol I Vierchant Shping Act 1876 (X of Vict c 50) as 24 (Coll.

Stat, Vol III) the Tree dency Banks Act 1876 (X of 1876) a 9 sufra

the Ind an

Compune Act 1882 (Vi of 1852) as 6 33 45 and 67 General Acts Vol. III

See the In han Majority Act 1875 (IV of 1875) Ceneral Acts Vol II For an except on to the relief in the case of emigrants see a G of the Assam Labour and Emigration Act 1901 (VI of 1901) Ben Code L. B and A Code U P Code.

216 (1) A contract is said to be induced by "undue influence"

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other cr (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason

where the relations subsisting between the parties are such that one of

the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other

of age, illness, or mental or bodily distress (3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears. on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue in-

This section was substituted for the original s 16 by the Indian Contract Act Amend-

 x_L XL

fined

' Und e influence '

defined

the will of another-

¹ General Acts Vol I

ment Act, 1899 (VI of 1899) s 2 General Acts, Vol V

(Clapter II - Of Contracts, Voidable Contracts and Void Agreements)

fluence shall lie upon the person in a position to dominate the will of tho

other Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 1

Illustrations

(a) A having advanced money to his son B during his minority, upon B a coming of age obtains by missies of parental influence a bond from B for a greater amount than the sum due in respect of the dvance. A employs undue influence
(b) A a man enfeebled by d seaso or age is induced by B s influence over him as his fields alternal to agree to pay B an unreasonable sum for his professional services.

B employs undue nfluence

1872 · Act IX 7

(c) A being in debt to B the money lender of his village contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence
(d) A applies to a banker for a loan at a time when there is stringency in the money

market The banker declines to make the loan except at an unusually high rate of interest A accepts the loan on these terms This is a transaction in the ordinary course of business and the contract is not induced by undue influence

17. "Fraud" means and includes any of the following acts com defined, mitted by a party to a contract, or with his connivance, or by his agent,2 with intent to deceive another party thereto or his agent, or to induce him to enter into the contract -

(1) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true,

(2) the active concealment of a fact by one having knowledge or belief of the fact.

(3) a promise made without any intention of performing it,

(4) any other act fitted to deceive.

(5) any such act or omission as the law specially declares to be frandulent

Explanation -Mere silence as to facts likely to affect the willing ness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak,3 or unless his silence 18, in itself, equivalent to speech

Illustrations

(a) A sells by auction to B a hor e which A knows to be ensound A says nothing

the

" Frand "

(d) \ and B being traders enter upon a contract. A has private information of a change in prices which would affect Bs willingness to proceed with the contract. A is not bound to inform B

¹ Supra.

^{*} Compare s 238 infra

See s 143, infra.

(Chapter II - Of Contracts, Voidable Contracts and Void Agreements)

" Misrepresentation 19 defined

- 18 "Misrepresentation" means and includes-
 - (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true though he believes it to be true.
 - (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;
 - (3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement

Vor lability of agreements with out free consent.

19 When consent to an agreement is caused by coercion, * * 1, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused

A party to a contract, whose consent was caused by fraud or mis representation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true

Exception -If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence

L'aplanation -A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misiepresentation was made, does not render a contract voidable

Illustrations

(a) A intending to deceive B faisely represents that hee hundred maunds of indigo are made annually at A s factory and thereby induces B to buy the factory The con tract is voidable at the option of B

⁽b) A by a materpresentation, leads B erroncously to believe that five hundred maunds of indigo are made annually at A a factory B examines the accounts of the factory by the factory of the factory of

The words undue influence were repealed by the Indian Contract Act Amend ment Act, 1809 (Vi of 1899) s 3, General Acts Vol V

1872 Act IX 7

(Chapter II -Of Contracts, I ordable Contracts and Vord Agreements)

119A When consent to an agreement is caused by undue influence. the agreement is a contract voidable at the option of the party whose consent was so caused

Power to set aside con tract induced by undue in fluence

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just

Illustrations

note B under threat of prosecuting the forged note If B sues on this

an agricultur st and by undue in th interest at 6 per cent per month pay the Rs 100 vith such interest as

may seem just

20 Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void

Explanation -An erroneous opinion as to the value of the thing which forms the subject matter of the agreement is not to be deemed a mistake as to a matter of fact f ct.

Agree nent void where both parties are under mistake as to matter of

Illustrations

(a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay It turns out that before the day of the bargain the ship conveying party was aware of the facts

it that the horse was dead at

the fact The agreement is

void

(c) A being entitled to an estate for the life of B agrees to sell it to C B was dead at the time of the agreement but both parties were ignorant of the fact. The agreement 15 void 21 A contract is not voidable because it was caused by a mistake as

Effect of mistakes as to law

to any law in force in British India but a mistake as to a law not in force in British India has the same effect as a mistake of fact

Illustrations

A and R make a cont to 15 DC

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22 A contract is not voidable merely because it was caused by one Contract of the parties to it being under a mistake as to a matter of fact

caused by m stake of one party as to matter of fact

¹S 19A was inserted by the Indian Contract Act Amendment Act 1839 (VI of 1839) B 3 General Acts Vol. V

(Chapter 11.-Of Contracts, Voidable Contracts and Void Agreements.)

What considerations and objects are lawful and what not 23. The consideration or object of an agreement is lawful, unless it is forbidden by law'; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations

(a) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B s promise to pay the 10,000 rupees. These are

the promise of they are lawful

XL

considerations

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it as wrecked on a certain volage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and those are lawful consideration.

(d) A promises to maintain B's child and B promises to pay Λ 1,000 rupees yearly for the purpose Here the promise of each party is the consideration for the promise of the consideration.

nent between A and B is void, as it implies a fraud by concesiment by A, on his principal

(h) A promises B to drop a prosecution which he has instituted against B for robberty, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i) As estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is probabled from purchasing the estate B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and O promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.
(i) A agrees to let her daughter to hire to B for concubrance. The agreement is considered.

(1) A agrees to let her daughter to hire to B for concubinage The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code 1

Void Agreements.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Agreements void, if considerations and objects unlawful in part.

Agreement without con

aideration.

writing and registered.

void,

unless it is in

or is a promise to

pay a debt barred i y

limitation

(Chapter II -Ot Contracts, Fordable Contracts and Ford Agreements)

Hustrotion

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles B promises to pay to A a salary of 10 000 rupees a year. The agreement is void, the object of A s promise and the consideration for B s promise being in part unlawful

25. An agreement made without consideration is void, unless-

- (1) it is expressed in writing and registered under the law for the time being in force for the registration of [documents], and is made on account of natural love and aftection between parties standing in a near relation to each other, or unless
- (2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless to compensate of the promisor was legally compellable to do, or unless
- (3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits

In any of these cases, such an agreement is a contract

Explanation I —Nothing in this section shall affect the validity, as between the donor and dones, of any gift actually made

Explanation 2—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate, but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given

Illustrations

(a) A promises, for no consideration, to give to B Rs 1000. This is a void agreement

(b) Λ , for natural love and affection, promises to give his son, B, Rs. 1,000 Λ puts his promise to B into writing and registers it. This is a contract

(c) A finds B s purse and gives it to him B promises to give A Rs 50 This is a contract

(d) A supports B s infant son B promises to pay A s expenses in so doing This is a contract.

(c) A owes B Rs 1000, but the debt is barred by the Limitation Act. A signs a written promise to pay B hs 500 on account of the debt. This is a contract.

(f) A agrees to sell a horse worth Rs 1000 for Rs 10 As consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth Ps 1,000 for Ps 10 . A denies that his consent to the agreement was freely given

The madequacy of the consideration is a fact which the Court should take into account in considering whether or not As cons nt was freely given.

Documents was substituted for 'assurances by the Repealing and Amending Act, 1891 (AII of 1891), General Acts, Vol. IV

(Chapter III -Of Contingent Contracts)

Enforcement of contracts contingent on an event happening

32 Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened

If the event becomes impossible, such contracts become void

Illustrations

stract cannot C, to whom

a mi

preed by law (c) A contracts to pay B a sum of money when B marries C C dies without being married to B The contract becomes void

Enforcement of contracts . contingent on an event not happening

When event

on which

contract 13

be deemed

it is the future con duct of a

impossible if

living person.

When con

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33. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before

Mustration

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks

34 If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which contingent to renders it impossible that he should so act within any definite time, or otherwise than under further contingencies

Mustration

A agrees to pay B a sum of money if B marries C C marries D The marriage of B to C must now be considered impossible although it 14 possible that D may die and that C may afterwards marry B

35. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible

tracte become void which are contin gent on happening of specified event within fixed time When con tracts may be enforced which are contingent on specified event not happening within fixed time

Contingent contracts to do or not to do anything if a specified un certain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen

Illustrations

to he promises we gay he seem of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

-1872 : Act IX.]

(Chapter III - Of Contingent Contracts Chapter IF .- Of the Performance of Contracts)

- (b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year
- 36. Contingent agreements to do or not to do anything, if an Agreement impossible event happens, are void, whether the impossibility of the contingent on impossible event is known or not to the parties to the agreement at the time when events rold it is made.

Illustrations

(a) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void

(b) A agrees to pay B 1 000 rupees if B will marry A's daughter C C was dead at the time of the agreement. The agreement is void

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

37. The parties to a contract must either perform, or offer to per- Obligation of form, their respective promises, unless such performance is dispensed contracts. with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract

Illustrations

'y on payment of Rs 1,000 A eliver the goods to B, and B is

day, at a certain price A dies A s representatives or by B

38. Where a promisor has made an offer of performance to the Effect of promisee, and the offer has not been accepted, the promisor is not accept offer responsible for non-performance, nor does he thereby lose his rights of perunder the contract.

Every such offer must fulfil the following conditions:-

- (1) it must be unconditional:
- (2) It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do:
- (3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing

What considerations and objects are lawful and what not

23. The consideration or object of an agreement is lawful, unlessit is forbidden by law1; or

is of such a nature that, if permitted, it would defeat the provisions of any law, or

is fraudulent; or

involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations

(a) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the house, and A's promise 000 rupees These are

> C. who owes that sum Here the promise of and they are lawful

> > XL

considerations

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations

(d) A promises to maintain B s child and B promises to pay A 1,000 rupees yearly for the purpose Here the promise of each party is the consideration for the promise of the other party They are lawful considerations

(e) A, B and C enter ir or to be acquired, by them)

(f) A promises to obta to pay 1,000 rupees to A

(g) A, being agent for .

of his principal, to obtain ment between A and B is void, as it implies a fraud by concealment by A, on his

principal (h) A promises B to drop a prosecution which he has instituted against B for robbery.

and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful (1) A's estate is sold for arrears of revenue under the provisions of an Act of the

Legislature, by which the defaulter is probabited from purchasing the estate B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law

(1) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is

(A) A agrees to let her daughter to hire to B for concubinage The agreement is void because it is immoral, though the letting may not be punishable under the Indian Penal Code 1

Void Agreements

24. If any part of a single consideration for one or more objects. or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Agreement without con-

sideration.

thing done,

pay a debt

barred ly limitation

or is a promise to

law.

void. unless

(Chapter II - Of Contracts, Voidable Contracts and Void Agreements.)

Illustration

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

25. An agreement made without consideration is void, unless-

(1) it is expressed in writing and registered under the law for the time being in force for the registration of [documents],1 and is made on account of natural love and affection between parties standing in a, it is in near relation to each other; or unless

writing and registered. (2) it is a promise to compensate, wholly or in part, a person who has or is a promise to already voluntarily done something for the promisor, or something compensate which the promisor was legally compellable to do, or unless for some

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1 .- Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2 .- An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate, but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations

- (a) A promises, for no consideration, to give to B Rs 1,000 This is a void agree ment
- (b) A, for natural love and affection, promises to give his son, B, Rs 1,000 A puts his promise to B into writing and registers it. This is a contract
- (c) A finds B s purse and gives it to him B promises to give A Rs 50 This is a contract
- (d) A supports B s infant son B promises to pay A s expenses in so doing This is a contract
- (c) A owes B Rs 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Its 500 on account of the debt. This is a contract
- (f) A agrees to sell a horse worth Rs 1,000 for Rs 10. As consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration
- (g) A agrees to sell a horse worth Rs 1,000 for Rs 10 A denies that his consent to the agreement was freely given

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not as consent was freely given

[&]quot; " Documents " was substituted for " assurances " by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

(Chapter II .- Of Contracts, Voidable Contracts and Void Agreements.)

Agreement 26 Every agreement in restraint of the marriage of any person, in restraint other than a minor, is void of marriage prov

Agreement 27. Every agreement by which any one is restrained from exercis in restraint ing a lawful profession, trade or business of any kind, is to that extent void

> Exception 1 -One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good will from him, carries on a like business therein Provided that such limits appear to the Court reasonable, regard being had to the nature of the business

> Exception 2 -Partners may, upon or in anticipation of a dissolu tion of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception

> Exception 3 -Partners may agree that some one or all of them will not carry on any business, other than that of the partnership, during the continuance of the partnership

> 28 Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract. by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent

> Exception 1 -This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred

> 1 When such a contract has been made, a suit may be brought for its specific performance, and if a suit, other than for such specific verformance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit

> Exception 2 -Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any

on business of which good will is sold . of agreement hetneen

of trade

Saving of agreement

not to carry

hiov

partners prior to dissolution or during continuance of partner

Agreements in restraint of legal proceedings brow.

ship.

Saving of contract to refer to arbitration dispute that may artse

Suits barred by such contracts

Saving of contract to refer questions that have

The second clause of exception 1 is repealed by the Specific Relief Act, 1877 (1 of 1877) throughout British India. The clause is however printed here in italies because the Co tract Act is in force in certain Scheduled Districts to which the Specific Relief Act does not apply
For Act I of 1877, see entra.

agreement 18 void

Contract.

2.85

(Chapter 11 - Of Contracts, Voidable Contracts and Void Agreements Chapter III-Of Contingent Contracts \

provision of any law in force for the time being as to references to already arbitration 1

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void

Agreements void for uncerta nty

Illustrations

There is nothing to show which of the two prices was to be given. The thousand

30. Agreements by way of wager are void, and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other un certain event on which any wager is made

Agreements by way of wager void

This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the for horse value or amount of five hundred rupees or upwards, to be awarded to racing the winner or winners of any horse race 2

Exception in favour of certain prizes

Nothing in this section shall be deemed to legalize any transaction Section 294A connected with horse racing, to which the provisions of section 294A of the Indian sco, of the Indian Penal Code apply

Penal Code not affected

CHAPTER III

OF CONTINGENT CONTRACTS

31 A "contingent contract" is a contract to do or not to do some "Contingent thing, if some event, collateral to such contract, does or does not contract happen

defined

Illustration_

A contracts to pay B Rs 10 000 of B s house is burnt. This is a contingent contract

^{&#}x27; Cf the Code of Civil Procedure 1903 (Act V of 1893) s 89 and Sch II, General Acts Vol VI the Indian Arbitration Act 1899 (IV. of 1899) General Acts Vol V, and the Indian Companies Act 1882 (VI of 1882) ss 206-211, General Acts, Vcl. III General Acts, Vol I

(Chapter III - Of Contingent Contracts)

Enforcement of contracts contingent on an event happening

When event

on which

contract is

be deemed

future con duct of a living person

When con tracte become

word which

are contra gent on happening of

impossible if ıt is tle

32. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened

If the event becomes impossible, such contracts become void

Illustrations

(a) A makes a contract with B to buy B s horse if A survives C This contract cannot be enforced by law unless and until C dies in A s lifetime (b) A makes a contract with B to sell a horse to B at a specified price if C to whom the horse has been offered refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse (c) A contracts to pay B a sum of money when B marries C C dies without being married to B The contract becomes void

Enforcement 33. Contingent contracts to do or not to do anything if an uncertain of contracts future event does not happen can be enforced when the happening of contingent on an event not that event becomes impossible, and not before happening

Mustration

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk The contract can be enforced when the ship sinks

34 If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which contingent to renders it impossible that he should so act within any definite time, or otherwise than under further contingencies

Illustration.

A agrees to pay B a sum of money if B marries C marries D. The marriage of B to C must now be considered impossible although it is possible til at D may die and that C may afterwards marry B

35 Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible

specified. event within fixed time When con Contingent contracts to do or not to do anything if a specified untracts may be certain event does not happen within a fixed time may be enforced by enforced which are law when the time fixed has expired and such event has not happened. contingent or, before the time fixed has expired, if it becomes certain that such on specified event not event will not happen happening within fixed time

Illustrations

(a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year and becomes void if the ship is burnt within the year

(Chapter III - Of Contingent Contracts Clapter IV - Of the Performance of Contracts)

- (b) A promises to pay B a sum of money if a certain ship does not return within a year The contract may be enforced if the ship does not return within the year or is burnt within the year
 - 36 Contingent agreements to do or not to do anything, if an Agreement impossible event happens are void, whether the impossibility of the continuent event is known or not to the parties to the agreement at the time when events you it is made

Illustrations

(a) A agrees to pay B 1 000 rupees if two straight lines should enclose a space. The agreement is void (b) A agrees to pay B 1 000 rupees if B will marry A s daughter C C was dead at the time of the agreement. The agreement is void

CHAPTER IV

OF THE PERFORMANCE OF CONTRACTS

Contracts which must be performed

37 The parties to a contract must either perform, or offer to per form, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law

Olligation of parties to contracts

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract

Illustrations

dies

ertain day on payment of Rs 1000 A and to deliver the goods to B and B is

certain day at a certain price A dies before the day The contract cannot be enforced either by A s representatives or by B

38 Where a promisor has made an offer of performance to the Effect of promisee and the offer has not been accepted the promisor is not accept offer responsible for non performance, nor does he thereby lose his rights of per under the contract

formance

Every such offer must fulfil the following conditions -

it must be unconditional

- (2) It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do
- (3) if the offer is an offer to deliver anything to the promisee, the promises must have a reasonable opportunity of seeme that the than-

(Chapter IV -Of the Performance of Contracts)

offered is the thing which the promisor is bound by his promise to deliver

An offer to one of several joint promisees has the same legal conse quences as an offer to all of them

Illustration

A contracts to deliver to B at his warehouse, on the 1st March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in the section. A must bring the cotton to B s warehouse on the appointed day under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for and that there are 100 bales

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct. his acquiescence in its continuance

Illustrations

(a) A. a singer enters into a contract with B the manager of a theatre to sing at his theatre two nights in every week during the next two months and B engages to pay her 100 rupees for each night s performance. On the sixth night A wilfully absents herself from the theatre B is at liberty to put an end to the contract

> of a theatre to sing at his and B engages to pay her wilfully absents herself

gnified his acquescence in the continuance of the contract and cannot now put an end to it but is entitled to com pensation for the damage sustained by h m through A s failure to sing on the sixth night.

By whom Contracts must be performed

40 If it appears from the nature of the case that it was the in tention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor In other cases, the promisor or his re presentatives may employ a competent person to perform it

Illustrations

- (a) A promises to pay B a sum of money A may perform this promise either by paying the money to B or by causing it to be paid to B by another and it A d es before the time appointed for payment his representatives must perform the promise. or employ some proper person to do so
 - (b) A promises to paint a picture for B A must perform this promise personally
- Effect of ac-41. When a promisee accepts performance of the promise from a cepting per third person, he cannot afterwards enforce it against the promisor
 - 42 When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons,

Liffect of re fugal of party to perform promise wholly

Person by whom pro n ise is to be perforn ed

formance from third person.

Devolution of joint habil ties.

(Chapter IF - Of the Performance of Contracts)

during their joint lives, and after the death, of any of them, his re presentative jointly with the survivor or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfil the promise

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any Tone or more] of such joint promisors to perform the whole of the becompelled promise

Any one of joint pro misors may to perform.

Each of two or more joint promisors may compel every other joint Fach pro promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract

may may compel contribution

If any one of two or more joint promisors makes default in such Sharing of contribution, the remaining joint promisors must bear the loss arising from such default in equal shares

loss by default in contribution

Explanation -Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal or entitle the principal to recover anything from the surety on account of payments made by the principal

Mustrotions

(a) A B and C jointly promise to pay D 5 000 rupees D may compel either A or B or C to pay him 5 000 rupees (b) A B and C jointly promise to pay D the sum of 3 000 rupees C is compelled to pay the whole A is insolvent but his assets are sufficient to pay one half of his deb s C is entitled to receive 500 rupees from A a estate and 12 500 rupees from Pages from the state and 12 500 rupees from B. (c) A B and C are under a joint prome to pay D 3 000 rupees C is unable to pay anything and A is compelled to pay the whole A is entitled to receive 1 500 rupees from

(d) A B and C are under a joint promise to pay D 3 000 rupees A and B being only sureties for C C fails to pay A and B are compelled to pay the whole sum. They are entitled to recover it from C

44 Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge lease of one the other joint promisor or joint promisors, neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors 2

Effect of rejoint pro

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or

¹ These words were substituted for the original word "one" by the Repealing and Amending Act 1891 (\II of 1891), General Acts, Vol IV 1 See s 138, infra

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survivors, and, after the death of the last survivor, with the representatives of all jointly 1

Illustration

A, in consideration of 5000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified B dies The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly

Time and Place for Performance

46. Where, by the contract, a promisor is to perform his promise without application by the promise, and no time for performance is specified, the engagement must be performed within a reasonable time

Explanation—The question "what is a reasonable time" is, in each particular case, a question of fact

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed

Illustration

A promises to deliver goods at Bs warehouse on the first January On that day A brings the goods to Bs warehouse but after the usual hour for closing it, and they are not received A has not performed his promise

48 When a promise is to be performed on a certain day, and the promiser has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business

Explanation —The question "what is a proper time and place" is, in each particular case, a question of fact

49 When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promiser to apply to the promise to appoint a reasonable place for the performance of the promise, and to perform it at such place

Illustration

A undertakes to deliver a thousand maunds of jute to B on a fixed day A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place

place for per formance of promise where time is specified and no application to be made

Time and

Application for perform ance on cer tain day to be at proper time and place,

Place for per formance of promise where no ap plication to be made and no place fixed for performance.

Time for per formance of promise where no ap plication is to be made and no time is specified.

¹ For an exception to s 45 in case of Government securities, see the Indian Securities Act, 1886 (AIII of 1896), s 5, General Acts, Vol III

addre sed to A

(Chapter IV -Of the Performance of Contracts)

50 The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions

Performance in manner or at time pro. scribed or sanctioned by promisee

Illustrations

(a) B owes A 2 000 rupees A desires B to pay the amount to A s account with C

m ۰y

owed to each other (c) A owes B 2 000 rupees B accepts some of As goods in reduction of the debt The delivery of the goods operates as a part payment

(d) A desires B who owes him Rs 100 to send him a note for Rs 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly

Performance of Reciprocal Promises

51 When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise

Promisor not bo and to per form inless reciprocal pron 14co ready and I willing to perform.

Illustrat ons

(a) A and B contract that A shall deliver goods to B to be pa d for by B on delivery A need not deliver the goods unless B is ready and willing to pay for the goods on

B need not pay for the goods unless A is ready and willing to deliver them on pay ment

on payment of the first instalment

52 Where the order in which reciprocal promises are to be per- Order of performed is expressly fixed by the contract, they shall be performed in that order and where the order is not expressly fixed by the contract, promise they shall be performed in that order which the nature of the transac tion requires

formance of rec procal

Illustrations

(a) 1 and B contract that 1 shall build a house for B at a fixed price. As promise to build the house mu t be performed before B s promise to pay for it

(b) \ and B contract that A shall make over his stock in trade to B at a fixed price and B promives to give security for the payment of the money As promise need no be performed in! the security is given for the nature of the transaction requires that A should have security before he delivers up his stock

53 When a contract contains reciprocal promises and one party Lisb'ity of to the contract prevents the other from performing his promise, the party precontract becomes voidable at the option of the party so prevented, and erented

(Chapter IV -Of the Performance of Contracts)

contract is to take effect

which

he is entitled to compensation ' from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Illustration

A and B contract that B shall execute certain work for A for a thousand rupees B is ready and willing to execute the work accordingly, but A prevents him from doing so The contract is voidable at the option of B, and, it he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non performance

Effect of de-54. When a contract consists of reciprocal promises, such that one fault as to of them cannot be performed, or that its performance cannot be claimed that promise till the other has been performed, and the promisor of the promise which should be first per last mentioned fails to perform it, such promisor cannot claim the formed, in performance of the reciprocal promise, and must make compensation to contract con sisting of the other party to the contract for any loss which such other party may reciprocal sustain by the non-performance of the contract. promises.

Illustrations

'ie Mauritius, a cargo to

A does not provide

romise, and must make
iance of the contract

fixed price, B supply

o furnish any scaffold
ute the work, and B is
the non performance of

the contract

Effect of failure to perform at fixed time, in contract in which t time is essential.

Effect of such failure when time is not essential 55. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Heretof ac ceptaneod if, in case of a contract voidable on account of the promiser's failure ceptaneod performance to perform his promise at the time agreed, the promise accepts persuaments formance of such promise at any time other than that agreed, the

(Chapter IF -Of the Performance of Contracts)

promisee cannot claim compensation for any loss occasioned by the than that non performance of the promise at the time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so 1

agreed upon.

56. An agreement to do an act impossible in itself is void

Agreement to do impossible act do act

A contract to do an act which, after the contract is made, becomes Contract to impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or becoming impossible or unlawful 2 Where one person has promised to do something which he knew, or.

unlawful Compensa tion for loss through non of act known to be impos sable or unlawful.

with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make performance compensation to such promisee for any loss which such promisee sustains through the non performance of the promise

Illustrations

(a) A agrees with B to discover treasure by magic. The agreement is void (b) A and B contract to marry each other Before the time fixed for the marriage, A goes mad The contract becomes void

(c) A contracts to marry B being already married to C and being forbidden by the flaw to which he is subject to practise polygamy A must make compensation to B for the loss caused to her by the non performance of his promise

(d) A contracts to take in cargo for B at a fore gn port A s Government afterwards declares war against the country in which the port is situated. The contract becomes void when var is declared

(e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B On several occasions A is too ill to act. The contract to act on those occasions become yord

57. Where persons reciprocally promise, firstly, to do certain things Reciprocal which are legal, and, secondly, under specified circumstances, to do promise to do things certain other things which are illegal, the first set of promises is a legal and -contract, but the second is a void agreement

also other things illegal,

Illustration

A and B agree that A shall sell B a house for 10 000 rupees but that if B uses it as a gambling house he shall pay A 50 000 rupees for it The first set of reciprocal promises namely to sell the house and to pay 10 000 rupees for it is a contract

The second set is for an unlawful object namely that B may use the house as a .gambl ng house and is a void agreement

58 In the case of an alternative promise, one branch of which is Alternative legal and the other illegal, the legal branch alone can be enforced

pranch being illegal

^{&#}x27;Compare ss 62 and 63 infra

See s 65 infra And see the Specific Relief Act 1877 (I

(Chapter IV .- Of the Performance of Contracts ;

Illustration

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium

This is a valid contract to deliver rice, and a void agreement as to the opium

Appropriation of Payments.

Application of payment where debt to be diseharged is ndicated 59. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations

- (a) A owes B, among other debts, 1,000 rupees upon a promissory note which falls due on the first June H cowes B no other debt of that amount. On the first June A payer to B 1,000 rupees The payment is to be applied to the discharge of the promissory note.
 - (b) A owes to B, among other debts, the sum of 557 rupees B writes to A and demands payment of this sum A sends to B 567 rupees This payment is to be applied to the discharge of the debt of which B had demanded payment

Application
of payment
where debt
to be dis
charged is
not indicated.

60. Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where neither party appropriates 61. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Contracts which need not be performed.

Effect of anystion, rescission and alteration of contract. 62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations

(a) A owes money to B under a contract It is agreed between A, B and C that B-shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted

(b) A owes B 10,000 rupees A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5 000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old

(c) A owes B 1,000 rupees under a contract B owes C 1,000 rupees B orders A tocredit C with 1,000 rupees in his books, but G does not assent to the arrangement B stills owes C 1,000 rupees, and no new contract has been entered to

Contract.

(Chapter IF - Of the Performance of Contracts)

63. Every promisee may dispense with or remit, wholly or in part, Promises the performance of the promise made to him, or may extend the time with or for such performance, or may accept instead of it any satisfaction remit per which he thinks fit.

formance of promise

Illustrations

a fact do h m to do so A is no

faction of the whole were payable The

conte them in satis

not been a thereof. r may be

٠.

(e) A owes B 2000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a [composition] of eight annas in the rupes upon their respective demands Payment to B of 1,000 rupees is a discharge of B s demand

64. When a person at whose option a contract is voidable rescinds Consequences it, the other party thereto need not perform any promise therein contained in which he is promisor The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received 4

sion of void

65. When an agreement is discovered to be void, or when a contract Obligation of becomes void, any person who has received any advantage under such has received agreement or contract is bound to restore it, or to make compensation advantage for it, to the person from whom he received it

under void agreement or contract that becomes roid ,

Mustrations

(a) A pays B 1000 rupees in consideration of B s promising to marry C A s daughter C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees

(b) A contracts with B to deliver to him 250 maunds of rice before the first of May B retains the 130 maunds

٠.

to sing at his theatre for B engages to pay her a might A wilfully absents B must pay A for

> are raid in advance ie loss of the profits fund to B the 1 000

But see a 135 infra See s 41 supra

Composition was substituted for "compensation" by Act XII of 1891, a 2. General Acts Vol IV See s 75, infra

(Chapter IV - Of tle Performance of Contracts)

Illustration

A and B agree that A shall pay B 1 000 rupees for which B shall afterwards deliver to A either rice or smuggled opium

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Application of payment where debt to be di charged 13 not indicated.

Application of payment

where debt

to be discharged is

ndicated

Application. of payment where neither party ap propriates.

Effect of novation rest 133100 and altera tion of con tract.

Chapter V-Of certain Relations resembling those created by Contract Chapter TI -Of tle Consequences of Breach of Contract)

Illustrations

(a) A, a tradesman leaves goods at Bs house by mistake B treats the goods as his Ho is bound to pay A for them (b) A saves B s property from fire A is not entitled to compensation from B if the circumstances show that he intended to act gratuitously

71 A person who finds goods belonging to another and takes them Responsibilinto his custody, is subject to the same responsibility as a bailee 1

72 A person to whom money has been paid, or anything delivered. by mistake or under coercion,2 must repay or return it

ity of finder of goods. Liability of person to whom money 15 paid or thing dela vered by mis

take or under

coercion

Illustrations

(a) A knowing (b) A upon the nn order ullegally excessive

CHAPTER VI

OF THE CONSEQUENCES OF BREACH OF CONTRACT

73. When a contract has been broken, the party who suffers by Compensasuch breach is entitled to receive, from the party who has broken the tion for loss contract, compensation for any loss or damage caused to him thereby, caused by which naturally arose in the usual course of things from such breach, breach of or which the parties knew, when they made the contract, to be likely to result from the breach of it

or damage contract.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach

When an obligation resembling those created by contract has been Compen incurred and has not been discharged, any person injured by the failure sation for to discharge it is entitled to receive the same compensation from the discharge party in default, as if such person had contracted to discharge it and obligation had broken his contract

failure to resembling those created by contract.

Explanation -In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non performance of the contract must be taken unto account

tice ss 151 and 152 unfra As to definition of "bailee," see s. 143, infra. For definition of coercion, see s. 15, supra.

(Chapter IV — Of the Performance of Contracts Clapter V — Of certain Relations resembling those created by Contract)

Mode of com municating or revoking rescission of voidable contract Effect of neglect of promisee to afford pro misor rea sonable faculties for

performance

66 The resession of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal ¹

67 If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non performance caused thereby

Illustration

A contracts with B to repair B shows

B reglects or refuses to point out to A the places in which his house requires repair

A is excused for the non performance of the contract if it is caused by such neglect

or refusal.

CHAPTER V

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT

Claim for necessaries supplied to person iscap able of con tracting or on his ac count

Peimburse.

in payment of which he

is interested.

ment of

paying money due by another 68 If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person

Illustrations

(c) A supplier B a limitine with necessaries suitable to his condition in life A is entitled to be reimbursed from B s property sunation with necessaries suitable to their condition in life A is entitled to be reimbursed from B s property condition in life A is entitled to be reimbursed from B s property

69 A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reinbursed by the other

Illustration

yable vern f B s

Obligation of person enjoy ing benefit; of non gra tuitous act 70 Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjois the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered 2

^{*} See as 3 and 5 supra * See to Brown of See to Presidency Small C use Courts see the Presidency Small Cause Courts Act 1882 (VV of 1882) s 32 General Acts Vol III

C and R not

1872 : Act IX]

(Chapter V .- Of certain Relations resembling those created by Contract Chapter TI -Of tle Consequences of Breach of Contract)

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72. A person to whom money has been paid, or anything delivered, Liability of by mistake or under coercion,2 must repay or return it

sty of finder of goods. person to whom money 18 paid or thing dela vered by mis take or under correion

Illustrations

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CHAPTER VI

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When an obligation resembling those created by contract has been compen incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract

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Explanation -In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non performance of the contract must be taken into account

tee ss 151 and 152 infra As to definition of bailee, see s 143 infra. For definition of coercion, see s 15, supra

(Chapter VI .- Of the Consequences of Breach of Contract.)

Illustrations.

(a) A contracts to sell and deliver 50 mainds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise B is entitled to receive from A, by way rice for hen the-

(c) A contract for delivery A a

pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(c) A, the owner of a bod, contracts with B to the contract price over the price.

sale at that place, starting on a specified day. The does not start at the time appeurited whereby the delayed beyond the time when it would have arrive the contract. After that date, and before the arriva. The measure of the compensation payable to B by which B could have obtained for the cargo at Mirz. serviced if forwarded in the course, and its marke.

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(9) A contracts to let his ship to B for a year, from the first of January, for a certain price Freights ruse, and, on the first of January, the line obtainable for the ship is higher than the contract price A breaks his promuse He must pay to B, by way of between the contract price and the price for

on and from the first of January tain quantity of iron at a fixed price, being a procure and deliver the iron B wrongfully

- ---

o A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it

(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to

ment contract

(r) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B C failty contents at the contract with B C failty contents.

the of his constact with A tout which had not take compensation for breach of that the difference between the contract B for another, but not the sum paid.

(Chapter VI,-Of the Consequences of Breach of Contract.) mage national areas a conservation and entrepanding to the

quality, and The goods um of money

s not pay the money on that day B in consequence of not receiving the money on that day is un able to pay his debts, and is totally ruined A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of

(o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a --- 's to sell the saltpetre to A breaks his promise et price of the first of the sale to C. is to be

taken into account

A knows having used to B

which B demand, , and too y way of ' price aps,

his

proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney s deposit, with interest, and the expense and the excess, if any, of the passage upon for the first, but not the sum of

74. When a contract has been broken, if a sum is named in the Compencontract as the amount to be paid in case of such breach, or if the breach of contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or stipulated loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for

sation for contract where penalty

*Explanation.-A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception -When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Government of India or

These paragraphs were substituted for the first para of a 74 by the Indian Contract Act Amendment Act, 1899 (VI of 1899), a. 4, General Acts, Vol. V.

Party right-

fully rescind ing contract

entitled to compensation.

(Chapter II - Of the Consequences of Breach of Contract)

of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein

Explanation—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations

- (a) A contracts with B to pay B Rs 1,000, if he fails to pay B Rs 500 on a given day A fails to pay B Rs 500 on that day B is entitled to recover from A such compensation, not exceeding Hs 1,600, as the Court considers reasonable
- (b) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs 5,000 A practises as a surgeon in Calcutta B is entitled to such compensation, not exceeding Rs 5,000, as the Court considers reasonable
- (c) A gives a recognizance binding him in a penalty of Rs 500 to appear in Court on a certain day He forieits his recognizance He is liable to pay the whole penalty
- ¹ (d) A gives B a bond for the repayment of Rs 1,000 with interest at 12 per cent at the end of six months, with a stipulation that in case of default, interest shall be pay able at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court con siders reasonable.
- ¹(e) A, who owes money to B, a money lender, undertakes to repay him by delivering to him 10 mainted of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maints. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.
- '(f) A undertakes to repay B a loan of Rs 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, he whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.
- (q) A borrows Rs 100 from B and gives him a bond for Rs 200 payable by five yearly instalments of Rs 40, with a simulation that, in default of payment of any instalment, the whole shall become due This is a stipulation by way of penalty.

75. A person who rightly rescinds a contract is entitled to compension for any damage which he has sustained through the non-fulfilment of the contract

Illustration

A, a singer, contracts a nights in every week during each nights in every week during each night is performance and B, in consequence resed damage which he has asstanced through the non fulfilment of the contract

[&]quot; Ille (d) (r) (f) and (g) were inverted by the Indian Contract Act Amendment Act, 1899 (VI of 1899), s 4 (*), General Acts, Vol V

CHAPTER VII

SALE OF GOODS

When Property in Goods sold passes

76 In this chapter, the word "goods" means and includes every "Coods" Lind of moveable property

defined. " Sale "

77 "Sale" is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer

defined.

78 Sale is effected by offer and acceptance of ascertained goods for Sale how a price.

effected.

or of a price for ascertained goods,

together with payment of the price or delivery of the goods, or with tender, part payment, earnest or part delivery, or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price or when the earnest is paid or when the whole or part of the goods is delivered

If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted

Illustrations

(a) B offers to buy As horse for 500 rupees A accepts Bs offer and delivers the horse to B The horse becomes B s property on delivery

(b) A sends goods to B vith the request that he will buy them at a stated price if he approves of them or return them if he does not approve of them B retains the goods and informs A that he approves of them The goods become B s when B retains them.

(c) B offers A for his horse 1 000 rupees the horse to be delivered to B on a stated day and the price to be paid on another stated day. A accepts the offer The horse be comes B s as soon as the proposal is accepted

(d) B offers A for his horse 1000 rupees on a month's credit 1 accepts the offer The horse becomes B s as soon as the offer is accepted

(e) B on the first January offers to A for a quantity of rice 2 000 rupees to be paid on the first March following the rice not to be taken away till paid for A accepts the offer The rice becomes B s as soon as the offer is accepted

79 Where there is a contract for the sale of a thing which has Transfer of vet to be ascertained, made or finished, the ownership of the thing as not transferred to the buyer, until it is ascertained, made or finished

Illustration

B orders A a barge builder to make him a barge. The price is not made parable by instalments. While the barge is building B pays to A money from time to time on account of the price. The ownership of the barge does not past to B until it is finited.

ownership : thing sold. which has yet to be .. ascertained made or finubed.

Completion of sale of goods which the seller as to put anto state in which buyer is to take them

Completion

goods when

seller has to do anything thereto in order to ascertain

of sale of

price

Completion

of sale when

goods are

unascer tained at

contract.

Ascertainment of

goods by

tion.

subsequent

80. Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Illustration

A, a ship builder, contracts to sell to B for a stated price, a vessel which is lying in A a yard, the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up and delivered

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done

Illustrations

(c) A, the owner of a stack of bark, contracts to sell it to B weigh and deliver it at 100 rupees per ton B agrees to take and pay for it on a certain day Part is weighed in the baseline of the state of the state

(b) A contract machine B is by the in weighing of deposit the owner

Here noth

ship of the heap of clay is transferred at once

82 Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained '

Illustration

A agrees to sell to F 20 tons of oil in A s cisterns. As cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B

83 Where the goods are not ascertained at the time of making the agreement for sale but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete

Illustration

A, having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads contracts to sell B 20 hogsheads of it After the contract A fills 20 logsheads with the sugar and gives nother than the sugar and gives nother than the sugar because the property of B as a sugar as a sugar based as reaches a by B the sugar because the property of B

Ascertain ment of goods by 84 Where the goods are not ascertained at the time of making the contract of sale, and by the terms of the contract the seller is to do

an act with reference to the goods which cannot be done until they seller's are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and by his doing so the goods are ascertained.

selection.

Illustration

B agrees with A to purchase of him, at a stated price to be paid on a fixed day, 50 maunds of rice, out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been accretained

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

Transfer of ownership c l moveable property. when sold together with ımmoveable.

Illustration

A agrees with B for the sale of a house and furniture The ownership of the furniture does not pass to B until the house is conveyed to B

86. When goods have become the property of the buyer, he must Buyer to bear any loss arising from their destruction or injury.

bear loss after goods have become

Illustrations

(a) B offers, and A accepts, 100 rupees for a stack of firewood standing on A's premises, the firewood to be allowed to remain on A's premises till a certain day, and not to h- 4-7 vhile the firewood is on A's premises, loss auction After the bid, it is injured the hammer falls, the loss falls on

his property.

87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract, by the seller, or by the buyer with the seller's assent.

Transfer of ownership of goods agreed to be sold while nonexistent.

Illustrations

(c) A, for a stated price, contracts that B may take and sell any crops that shall be ı¢s

az

88. A contract for the sale of goods to be delivered at a future day Contract to is binding, though the goods are not in the possession of the seller at liver, at a

future day the time of making the contract, and though at that time he has no goods not in reasonable expectation of acquiring them otherwise than by purchase seller a pos

session at date of contract

Determina tion of price

contract

made

not fixed by

Illustration

A contracts on the first January to sell B 50 shares in the East Indian Railway Com pany to be delivered and paid for on the first March of the same year A at the time of making the contract is not in possession of any shares. The contract is valid

89 Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable

Illustration

Delivery 90 Delivery of goods sold may be made by doing anything which Delivery how has the effect of putting them in the possession of the buyer, or of any

person authorized to hold them on his behalf

Illustrations |

A set which are the properties of the goods houseman of C

a warehouseman A gives B such order and transfers the

ton to be paid for at the time

f he had twenty tons of the

oil an order to transfer five of them into the name of B C makes the transfer in h s books and gives As clerk a notice of the transfer for B As clerk takes the transfer notice to B and offers to give thim on payment of the price of the oil B refuses to pay.

There has been no delivery to B as B never assented to make C his agent to hold for him the five tons selected by A 91 A delivery to a wharfinger or carrier of the goods sold has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery

Effect of delivery to whatfinger or carrier is so made as to enable him to hold the wharfinger or carrier responsiblefor the safe custody or delivery of the goods

30.5

(Chapter VII - Sale of Goods)

Illustration

5 m 1

92 A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole, but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder

Effect of part delivery

Illustrations

(a) A sh p arrives in a harbour lader with a cargo consigned to A the buyer of the the purpose

> fter the sale This has not

After the naunds to C

93 In the absence of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery

Seller not bound to deliver until buyer applies for delivery ; Place of delivery

94 In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale, and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced

Seller's Lagn

95 Unless a contrary intention appears by the contract, a seller Seller sien. has a lien on sold goods as long as they remain in his possession and the price or any part of it remains unpaid

96 Where, by the contract the payment is to be made at a future Lieuwhere day, but no time is fixed for the delivery of the goods the seller has no lien and the buyer is entitled to a present delivery of the goods without payment But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery delivery of the goods the seller may retain the goods for the price

future day but no tıme fixed for

Explanation -A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them

' insol TERCY ' defined

τ

Illustration

A sells to B a quantity of sugar in A's warehouse It is agreed that three months' credit shall be given B allows the sugar to remain in A's warehouse Before the expiry of the three months, B becomes insolvent A may retain the goods for the price

where pay ment to be made at future day. and buyer allows goods to remain in seller's pos session.

Seller's lien

97. Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day and does not then pay for them, the seller may retain the goods for the price.

Illustration

A sells to B a quantity of sugar in A's warehouse It is agreed that three months' credit shall be given B allows the sugar to remain in A s warehouse till the expiry of the three months, and then does not pay for them A may retain the goods for the price

Seller's hen against sub sequent buyer

98. A seller in possession of goods sold may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

Stoppage in Transit.

Power of seller to stop in transit.

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer

When goods are to be deemed in transit

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged

Illustrations

(a) B, living at Madras, orders goods of A, at Patns, and directs that they shall be sent to Madras
The goods are sent to Calcutta, and there delivered to C, a wharfinger,
to be forwarded to Madras The goods, while they are in the possession of C, are in transit.

(b) B, at Delhi, orders goods of A, at Calcutta A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there B refuses to receive them, and immediately afterwards stops payment. The goods are in transit

the ship.

B sends

cotton is delivered on board the ship Bombay

 order or becomes

i

101. The seller's right of stoppage, does not, except in the cases hereinafter mentioned, cease on the buyer's reselling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

Continuance of right of stoppage

102. The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods,1 assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them

Cessation of right on as signment by buyer of bill of lading

Mustrations

(a) A sells and consigns certain goods to B and sends him the bill of lading A being still unpaid, B becomes insolvent and while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit

B 1 mes insolvent, ish to C, who still stop the

103. Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made. stop the goods in transit

Stoppage where I ill of lading is pledged to secure «pecific advance

Illustrations

(a) A sells and consigns goods to B of the value of 12 000 rupces B assigns the bill of lading for these goods to C to secure a specific advance of 5000 rupces made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9 000 rupees A is not entitled to stop the goods except on payment or tender to C of

104. The seller may effect stoppage in transit either by taking Stoppage actual possession of the goods, or by giving notice of his claim to the how effected. carrier or other depositary in whose possession they are

105. Such notice may be given, either to the person who has the Notice immediate possession of the goods, or to the principal whose servant has of seller's possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buver

106. Stoppage in transit entitles the seller to hold the goods stopped Right of until the price of the whole of the goods sold is paid

seller on stoppage

Illustration

A sells to B 100 bales of cotton 60 bales having come into B a possession and 40 being still in transit B becomes insolvent and A being still impaid stops the 40 bales in transit A is entitled to hold the 40 bales until the price of the 100 bales is paid

Resale

107. Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, resell them, after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit which may occur on such resale

Tatle

108 No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases —

Exception I—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock warrant, warehouse keeper's certificate, wharfingers certificate or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2 —If one of several joint owners of goods has the solepossistion of them by the permission of the co-owners the ownership of the goods is transferred to any person who buys them of such jointowner in good faith, and under circumstances which are not such as toraise a reasonable presumption that the person in possession of the goods has no right to sell them

Exception 3—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, burs them in good faith of the person in possession, unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents

In the case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract

lesale on uyer a; silure to erform.

Fitle con reyed by eller of goods to suyer

Mustrations

(a) A buys from B, in good faith, a cow which B had stolen from C The property in the cow is not transferred to A (b) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain

c

(d) A, B and C are joint Hindu brothers, who own certain cattle in common left by B and C in possession of a cow, which he sells to D D purchases bond fide The property in the cow is transferred to D

(c) A, by a misrepresentation not amounting to cheating induces B to sell and deliver to him a horse A sells the horse to C before B has resembed the contract. The property in the horse is transferred to C, and B is entitled to compensation from A for any loss

ing or forgery, The property

Warranty

109. If the buyer, or any person claiming under him, is, by reason Seller's re of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or the person claiming under him, of title for loss caused thereby, unless a contrary intention appears by the contract

sponsibility for badness

110. An implied warranty of goodness or quality may be established Establish by the custom of any particular trade

ment of implied warranty of coodness or quality

111. On the sale of provisions, there is an implied warranty that Warranty of they are sound

soundness implied on sale of pro visions,

112 On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample

Warranty of bulk implied on sale of goods by sample Warranty 1mplied where goods are sold as being of a certain denomina

113. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk

Explanation -But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of tion. that denomination, there is no implied warranty

Illustrations

(a) A, at Calcutta sells to B twelve bars of "waste silk," then on its way from Murshedabad to Calcutta There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."

(U) A buys by sample and after having inspected the bulk 100 bales of Fair Bengal cotton. The cotton proves not to be such as is known in the market as Fair Bengal there is a breach of warrant.

Warranty where goods ordered for a specified purpose 114 Where goods have been ordered for a specified purpose, for which goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose

Illustration.

B orders of A a copper manufacturer copper for sheathing a vessel A on this order supplies copper. There is an implied warranty that the copper is fit for sheathing a sessel

Warranty on sale of articles of well known ascertained 115 Upon the sale of an article of a well known ascertained kind, there is no implied warranty of its fitness for any particular purpose

Illustration

B writes to A the owner of a patent aventue for cleaning cettur— Sand as some clean the cettors at my factory A sands the matter and the sands are some control by A that is the article known as a but none that it, is fif for the particular purpose of

Seller when not respon suble for latent defect. 116 In the absence of fraud and of any express warranty of quality, the seller of an article which answers the description under which it was sold is not responsible for a latent defect in 1.

777.....

A sells to B a horse of which A was unaware A is not responsible for this

Buyer a right on breach of warranty

117 Where a specific article sold with a warranty has been delivered and accepted and the warranty is broken, the sale is not thereby render ed voidable, but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty

Illustration.

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the t me of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundess.

Right of b yer on l reach of warranty in respect of goods not ascertained. 118 Where there has been a contract, with a warranty, for the sale of goods which, at the time of the contract, were not ascertained or not in existence, and the warranty is broken, the buyer may

nccept the goods or refuse to accept the goods when tendered, or Leep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them, provided that during

and trying them, and then recuse to accept them, provided that during such time he exercises no other act of ownership over them than is necessary for the purpose of examination and trial 1872 : Act IX.]

(Chapter VII .- Sale of Goods)

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty, but, if he accepts the goods and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty

Illustrations

(a) A agrees to sell and without application on B s part, deliver to B 200 bales of un ascertained cotton by sample Cotton not in accordance with sample is delivered to B B may return it if he has not kept it longer than a reasonable time for the purpose of examination

sacks of flour by sample The flour is delivered mination finds it not equal to sample B after cannot now rescind the contract and recover the from A for any loss caused by the breach of

warranty

(c) B makes two pairs of shoes for A by A s order When the shoes are delivered they do not fit A A keeps both pairs for a day He wears one pair for a short time in the house and takes a long walk out of doors in the other pair. He may refuse to accept the first pair but not the second But he may recover compensation for any loss sustained by the defect of the second pair

Miscellaneous

119. When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered

When buyer may refuse to accept, if goods not ordered are sent with coods ordered

Illustration

A orders of B specific articles of China B sends these articles to A in a hamper with other articles of China which had not been ordered. A may refuse to accept any of the goods sent

120. If a buyer wrongfully refuses to accept the goods sold to him. this amounts to a breach of the contract of sale

refusal to accept. 121. When goods sold have been delivered to the buyer, the seller is Picht of not entitled to rescind the contract on the buyer's failing to pay the seller as to price at the time fixed unless it was stipulated by the contract that he failure of should be so entitled

rescussion on buyer to pay price at time fixed.

Effect of wrongful

122 Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down

Sale and transfer of lots sold by auction,

123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer

Effect of use by seller of pretended baddings to raise trice

(Chapter VIII .- Of Indemnity and Guarantee)

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE

" Contract of indem nity '' de fined

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

Illustration

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees This is a contract of indemnity

Rights of indemnity holder when sued.

- 125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-
- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.
- (2) all costs which he may be compelled to pay in any such suit if. in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit.
- (3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to made in the absence of any contract of indemnity. or if the promisor authorized him to compromise the suit

" Contract of guarantee ' surety," debtor", and

" creditor "

Consideration or guarantes

- 126 A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default The person who gives the guarantee is called the "surety". the person in respect of whose default the guarantee is given is called the ' principal debtor," and the person to whom the guarantee is given is called the "creditor" A guarantee may be either oral or written
- 127. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee

Mustrations

(a) B requests A to sell and deliver to him goods on credit A agrees to do so, provided C will guarantee the payment of the price of the goods C promises to guarantee the payment in consideration of As promise to deliver the goods This is a sufficient consideration for C a promise (b) A sells and delivers goods to B C alternation requests A to forchear to sup B for the debt for a year, and promises that it he does so C will pay for them in default of payment by B A agrees to forbear as requested This is a sufficient consideration for C a promise.

(c) A sells and delivers goods to B C afterwards without consideration, agrees to pay for them in default of B The agreement is void

(Chapter VIII .- Of Indemnsty and Guarantee)

128. The liability of the surety is co extensive with that of the Surety's principal debtor, unless it is otherwise provided by the contract

liability

Illustration

A guarantees to B the payment of a bill of exchange by C, the accepter The bill is dishonoured by C A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it

" Continuing guarantee "

129. A guarantee which extends to a series of transactions is called a "continuing guarantee."

Illustrations

r zamındarı llection and tea he may f £100 and

fails to pay lable to B

e sacks of flour to be delivered by B

to the extent of £100

À

five sacks to C C pays for them i not pay for The guarantee given he is not hable for the price of the four sacks

of continuing guarantee

130. A continuing guarantee may at any time be revoked by the Revocation surety, as to future transactions, by notice to the creditor

Illustrations

(a) A in consideration of B s discounting at A s request bills of exchange for C due payment of all such bills to the extent of the extent of 2 000 rupees Afterwards at the antee This revocation discharges A from all But A is liable to B for the 2 000 rupees, on

(b) A guarantees to B to the extent of 10 000 rupees that C shall pay all the oils that B shall draw upon him B draws upon C C accepts the bill. A gives notice of revocation C dishonours the bill at maturity A is liable upon his guarantee

131 The death of the surety operates, in the absence of any contract Percention to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions

of continuing guarantee by surety s death.

132 Where two persons contract with a third person to undertake a Liability of certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence between of the second contract, although such third person may have been aware of its existence

two rersons primarily luble not a Tected by arrangement them that one shall be surety on other 4 default

Illustration

A and B make a joint and several promissory note to C. A makes it in fact as surely for B and C knows this at the time when the note is made. The fact that A to the knowledge of C made the note as surety for B is no answer to a suit by C against A upon the note

(Chapter VIII -Of Indemnity and Guarantee)

contract

Discharge of

surety by

variance in terms of 183 Any variance, made without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance

Illustrations

(a) A becomes surety to C for B s conduct as a manager in C s bank. Afterwards B and C contract without A s consent that B s salary shall be raised and that he shall must be overdraw, by the variance

salary, upon A s um as such clerk. ould be paid by a not hable for sub

(d) A gives to C a continuing guarantee to the extent of 3000 ripees for any oil the know is more

ly money

C pays the 5 000 rupecs to B on the 1st January A is discharged from his liability as the contract has been varied masmuch as C might sue B for the money before the 1st of March

Discharge of aurety by release or discharge of principal debtor 134 The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor

Illustrations

suretyshin

135 A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract

Discharge of surety when creditor com pounds with gives time to or agrees not to sur principal debtor 1872 . Act IX.]

(Chapter VIII - Of Indemnity and Guarantee)

136. Where a contract to give time to the principal debtor is made Surety not by the creditor with a third person, and not with the principal debtor, the surety is not discharged

Illustration

give time to C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B A is not discharged

137. Mere forbearance on the part of the creditor to sue the prin cipal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety surety

principal debtor Creditor s forbearance to sue does not discharge

discharged when agree

ment made with third person to

Illustration

B owes to C a debt guaranteed by A The debt becomes payable C does not sue B for a year after the debt has become payable A is not discharged from his suretyship

138 Where there are co sureties, a release by the creditor of one Release of of them does not discharge the others, neither does it free the surety so released from his responsibility to the other sureties 1

139 If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is dis charged

one co-surety does not discharge others. Discharge of surety by creditor s act or omission impairing surety seventual remedy

Illustrations

(a) B contracts to build a ship for C for a given sum to be paid by instalments as the ce of the con nts A as das

> note made in B s furniture scharge of the l wilful negli note

s fidelity

the cash omits to see this done as promised and M embezzles A is not hable to B on his guarantee

140 Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the prin cipal debtor

Rights of surety on payment or performance

141 A surety is entitled to the benefit of every security which the Surety a creditor has against the principal debtor at the time when the contract right to of suretyship is entered into, wheth r the surety knows of the existence creditor : of such security or not, and, if the creditor loses or, without the concent securities.

(Chapter VIII - Of Indemnity and Guarantee)

of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations

(c) C advances to E, has tenant, 2,000 rupees on the gnarantee of A. C has also a further security for the 2,000 rupees by a mortgage of Bs furniture O cancel the mortgage B becomes resolvent, and C sues A on his guarantee A is discharged from liability to the amount of the value of the furniture

(b) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A C afterwards takes B s goods in execution under the decree, and then, without the knowledge of A, withdraws the execution A is discharged

(c) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to Afterwards, C obtains from B a further security for the same debt Subsequently, C gives up the further security A is not discharged

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid

Illustrations

- (a) A engages B as clerk to collect money for him B fails to account for some of his receipts, and \hat{A} in consequence calls upon him to furn sh security for his duly accounting C gives his guarantee for B s duly accounting \hat{A} does not acquaint \hat{O} with B s previous conduct B alterwards makes default. The guarantee is invalid
- (b) A guarantees to C payment for iron to be supplied by film to B to the amount of 2000 tons B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A A is not hable as a surety
- 144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as cosurety, the guarantee is not valid if that other person does not join.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations

(c) B is indebted to C, and \ is surety for the debt \ C demands payment from A, and on his refural sures him for the amount \ A defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from B the smount paid by him for costs as well as the principal debt

(b) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount C, the holder of the bill damage. — ut of the bill damage. — ut of the bill damage. ditte · 10.33

Guarantee obtained by misrepre-

sentation mvalid. Guarantea obtained by concealment. mvalid.

Guarantee on contract that creditor shall not act on it until co surety 10ins.

Implied promise to indemnify surety.

1872 : Act IX.7

(Chapter VIII .- Of Indemnity and Guarantee. Chapter IX .- Of Bailment)

(c) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2 000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

146. Where two or more persons are co-sureties for the same debt Co-sureties or duty, either jointly or severally, and whether under the same or hable to contribute different contracts, and whether with or without the knowledge of each equally. other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal dehtor.1

Illustrations

(a) A, B and C are sureties to D for the sum of 3,000 rupees lent to E E makes default in payment A, B and C are liable, as between themselves, to pay 1,000 rupees each

147. Co-sureties who are bound in different sums are liable to pay Liability of equally as far as the limits of their respective obligations permit.

co-sureties hound in different sums.

Illustrations

(a) A, B and C, as sureties for D, enter into three several bonds, each in a different

CHAPTER IX.

OF BAILMENT.

148. A "bailment" is the delivery of goods by one person to "Bailment," another for some purpose, upon a contract that they shall, when the "barlor," and purpose is accomplished, be returned or otherwise disposed of accord- defined ing to the directions of the person delivering them The person delivering the goods is called the "bailor." The person to whom they are delivered is called the "bailee"

(Chapter IX .- Of Barlment)

Explanation .- If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

Delivery to ba lee how mada.

149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

150. The bailor is bound to disclose to the bailee faults in the goods Barlor's dut v to disclose bailed, of which the bailor is aware, and which materially interfere faults m with the use of them, or expose the bailee to extraordinary risks; and, goods harled if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults

in the goods bailed.

Illustrations

(a) A lends a horse, which he knows to be vicious, to B He does not disclose the fact that the horse is vicious The horse runs away B is thrown and injured A is responsible to B for damage sustained (b) A hires a carriage of B The carriage is unsafe, though B is not aware of it, and A is injured B is responsible to A for the injury

Care to be

1151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.2

1 152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed. if he has taken the amount of care of it described in section 151.

153. A contract of bailment is voidable at the option of the bailor. if the brilee does any act with regard to the goods bailed, inconsistent act inconsist. with the conditions of the bailment.

Illustration

A lets to B, for hire, a horse for his own riding B drives the horse in his carriage. This is, at the option of A, a termination of the bailment

154. If the bailee makes, any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make com-

taken by

Bailes when not liable for

Termination. of bailment

by bailee's

ent with conditions.

loss, etc .

of thing bailed

barlee

Act, 1865 (III of 1865), General Acts, Vol I

Liability of bailee making

^{. ...} I to of the To store of the Port of Madras constituted under Mad Act · been declared to be that of a bailee, under "in the steene of any special contract" in Act. 1905 (Mad Act II of 1905) n Railways Act, 1800 (IX of 1890) s 72, of common carriers, see s 8 of the Carriers

during such use of them

(Chapter IX -Of Barlment)

pensation to the bailor for any damage arising to the goods from or unauthorized

use of goods bailed

Illustrations

(a) A lends a horse to B for his own riding only B allows C a member of his family, to ride the horse C rides with care but the horse accidentally falls and is natured B is liable to make compensation to A for the injury done to the horse (b) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse

155 If the bailee with the consent of the bailor, mixes the goods Effect of of the bailor with his own goods, the bailor and the bailee shall have builor scon an interest, in proportion to their respective shares, in the mixture sent of his thus produced

n ixture, with goods with bailec &

156 If the bailee, without the consent of the bailor, mixes the Effect of goods of the bailor with his own goods, and the goods can be separated mixture, or divided, the property in the goods remains in the parties respectively, build a con but the bailee is bound to bear the expense of separation or division. and any damage arising from the mixture.

without sent when the goods сап Бе separated

Mustration

A bails 100 bales of cotton marked with a particular mark to B B without As consent mixes the 100 bales with other bales of his own bearing a different mark A is entitled to have his 100 bales returned and B is bound to bear all the expense incurred in the separation of the pales and any other incidental damage

157 If the bulee without the consent of the bullor, mixes the Effect of goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver bailor scor them back, the bailor is entitled to be compensated by the bailee for the goods the loss of the goods

without sent, when cannot be separated

Illustration

A bails a barrel of Cape flour worth Rs 45 to B B without As concent mixes the flour with country flour of his own worth only Rs 25 a barrel B must compensate A for the loss of his flour

158 Where, by the conditions of the bailment, the goods are to be lept or to be carried or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment

Repayment by bailer of necessary ex penses.

159 The lender of a thing for use may at any time require its Pertoration return if the loan was gratuitous even though he lent it for a speci lent grafied time or purpose But if, on the faith of such loan made for a spe- th only cified time or purpose the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause thim loss exceeding the benefit actually derived by him from the loan.

(Chapter IX -Of Bailment)

the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived

goods bailed on expiration of time or accomplish ment of pur poso Bailee are sponsibility when goods are not duly returned

Return of

Termination of gratuitous bailment by death Bailor entitled to increase or profit from goods bailed

160 It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

- *161 If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time 2
- 162 A gratuitous bailment is terminated by the death either of the bailor or of the bailee
- 163 In the absence of any contract to the contrary, the bailes is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed

Illustration.

A leaves a cow in the custody of B to be taken care of The cow has a calf B is bound to deliver the calf as well as the cow to A.

Bailor's responsibility to bailec. 164 The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them

Bailn ent by several joint owners. 165 If several joint owners of goods bail them, the bailes may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary

Bulee not responsible on re delivery to buler without 166 If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

title
Pi ht of
third person
elalming
goods bulled.

167 If a person, other than the bailor, claims goods hailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods

^{*5 161} has been declared to apply to the responsibility of the Trustees of the Fort of Values as to animals and goods in their possess on see Values Port Trust Act 1905. (Val. 1 tet II of 1905).

* As to ruleway contracts see the Indian Railways Act 1800 (IV of 1800) s 72, General Acts Vol IV.

* See 5 117 of the Indian Evidence Act 1872 (I of 1872) supra.

(Chapter IX -Of Bailment)

168 The finder of goods has no right to sue the owner for com pensation for trouble and expense voluntarily incurred by him to pre-finder of serve the goods and to find out the owner, but he may retain the goods may see for against the owner until he receives such compensation, and, where reward the owner has offered a specific reward for the return of goods lost, the offered. finder may sue for such reward, and may retain the goods until he receives it

Right of

169. When a thing which is commonly the subject of sale is lost, When finder if the owner cannot with reasonable diligence be found, or if he refuses, of thing com upon demand, to pay the lawful charges of the finder, the finder may sale may sell 1t-

(1) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the thing found, amount to two thirds of its value

170 Where the bailee has, in accordance with the purpose of the Bailee's bailment rendered any service involving the exercise of labour or her lien skill in respect of the goods bailed he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due re muneration for the services he has rendered in respect of them

Illustrations

(a) A delivers a rough diamond to B a jeweller to be cut and polished which is accordingly done B is entitled to retain the stone till he is paid for the services he has

(b) A gives cloth to B a tailor to make into a cost B prom ses A to deliver the cost as soon as it is finished and to give a three months credit for the price B is not entitled to retain the coat until he is paid

171 Bankers, factors, wharfingers attorneys of a High Court and General lien policy brolers may, in the absence of a contract to the contrary, re thin, as a security for a general balance of account, any goods bailed to wharfingers, them, but no other persons have a right to retain, as a security for such and polity balance goods bailed to them, unless there is an express contract to that effect 3

of bankers factors 4 attornev4 broker.

Bailments of Pledges

172 The bulment of goods as security for payment of a debt or performance of a promise is called pledge ' The lailor is in this case and called the "pawnor" The bailee is called the 'pawnee

Pledge " pawnor DAWNES ' der ned.

173 The prwnee may retain the goods pledged not only for pay- Pawnee's ment of the debt or the performance of the promise, but for the interest " ht of of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged

As to hen of an agent see a 221 infra. As to hen of Railway Admin.s rat on see the Indian Railways Act 1890 (IN of 1890) a 55 General Acts Vol. IV

TOL II

(Chapter IX - Of Bailment)

Pawnee not to retain for debt or pro mise other than that for which goods pledged Presumption in case of subsequent advances. Pawnee s right as to extra

or linary

expenses incurred lawnee s

right where

pawnor

makes default 174 The pawnee shall not, in the absence of a contract to that effect retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged, but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee

175 The pawnee is entitled to receive from the pawnor extraor dinary expenses incurred by him for the preservation of the goods pledged

176 If the pawnor makes default in payment of the debt, or per formance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security or he may sell the thing pledged, on giving the pawnor rea sonable notice of the sale

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor

[] 'a lting pawner s right to redeem 177 If a time is stipulated for the payment of the debt, or performance of the promise for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them 1, but he must, in that case, pay, in addition, any expenses which have arisen from his default

Pledge by possessor of goods or of documentary title to goods

178 A person who is in possession of any goods, or of any bill of lading dock warrant, warehouse keeper's certificate, whatfinger's certificate or warrant or order for delivery, or any other document of title to goods may make a valid pledge of such goods or documents. Provided that the pawnee acts in good faith, and under circumstances which are not such as to ruise a reasonable presumption that the pawnor is acting improperly

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them by means of an offence or fraud

I ledge where pawner has only a lin ited interest.

179 Where a person pledges goods in which he has only a limited interest the pledge is valid to the extent of that interest

For I mitation see the Indian Limitation Act 1908 (IN of 1908) Sch I No 145, General Acts Vol VI

(Chapter IA -Of Barlivent Chapter X -Agency)

Suits by Bailees or Bailors against Wrong doers

180 If a third person wrongfully deprives the bailee of the use or Suit by

possession of the goods bailed, or does them any injury, the bailee is en titled to use such remedies as the owner might have used in the like wrong doer case if no bailment had been made, and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury

181 Whatever is obtained by way of relief or compensation in any Apportion such suit shall, as between the builor and the bailee be dealt with ac cording to their respective interests

ment of relief or compensa tion obtained by such suits,

CHAPTER X

AGLICI

Appointment and Authority of Agents

182 An 'agent" is a person employed to do any act for another or to represent another in dealings with third persons The person for and prinwhom such act is done, or who is so represented, is called the "prin define ! cipal "

to which he is subject and who is of sound mind may employ an agent 1 184 As between the principal and third persons any person may

183 Any person was is of the age of majority according to the law whomay

employ agent

become an agent, but no person who is not of the age of majority and of sound mind can become an agent so as to be responsible to his principal according to the provisions in that behalf herein contained

186 The authority of an agent may be expressed or implied "

Who n as be an agent

185 No consideration is necessary to create an agency

Considera tion not recessars 4mmt's t thorsty may be expressed cr

bulg as 187 An authority is said to be express when it is given by word, Petinities of spoken or written. In authority a said to be implied when it is to be inferred from the circumstances of the case and things spoken or written or the ordinary course of dealing may be accounted circum

extress at 1 imp ied suther to

stances of the case

C/ s 11 sugra See ho e er s 33 of the In livin Registrat on Act 1903 Ceneral Acts Vol VI See al o Code of Civil I rocedure 1908 Act V of 1908 Sch I Order III rule 4 Ceneral Acts

(Chapter X -Agency)

Illu*tration

A owns a shop in Serampur living him, elf in Calcutta and visiting the shop occationally. The shop is managed by B and he is in the habit of ordering goods from C in the name of A for the purpose of the shop and of paring for them out of A s funds with As knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop

Extent or agent s authority

188 An agent having an authority to do an act has authority to doevery lawful thing which is necessary in order to do such act

An agent having an authority to carry on a business has authority to do every lawful thing nece sary for the purpose, or usually done in the course of conducting such business

Illustrations

(a) A is employed by B re iding in London to recover at Bombay a debt due to B A may adopt any legal proce s necessary for the purpose of recovering the debt and may give a val d discharge for the same

(b) A constitutes B his agent to carry on his business of a ship-builder B may pur cha e timber and other materials and hire workmen for the purpo es of carrying on the bn. mess

Arrent * authority in an emer gracy

189 An agent has authority in an emergency to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances

Illustrations.

(a) An agent for sale may have goods repaired if it be necessary

(b) A cons gas provisions to B at Calcutta with directors to send them immediately to C at Cuttack B may sell the provisions at Calcuita if they will not bear the journey to Cuttack without spoiling

Sub Agents

When rent cannot de 🕶 e

" Sub arent"

Lefner

Representa t ncf ora can l bw al⊢ Rent proint.

appointed ternt see enone to for suba-rt Sabamat a fenomens.

ity

190 An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally. unle by the ordinary custom of trade a sub-agent may, or, from the nature of the agency a sub-agent must be employed

191 \ sub-ngent" is a person employed by, and acting under the control of the original agent in the business of the agency

192 Where a sub-agent is properly appointed, the principal is, so for as regards third persons represented by the sub-agent, and is bound by and re-pensible for his acts as if he were an agent originally appointed by the principal

The "gent is responsible to the principal for the acts of the sub agent

The sub-agent is responsible for his acts to the agent but not to the principal except in case of fraud or wilful wrong

1872 : Act IX.7

(Chapter X - Agency)

193. Where an agent, without having authority to do so, has ap- Agent s pointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for sab agent his acts both to the principal and to third persons, the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal

ity for appointed without authority

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him

Pelation between principal and person duly ap pointed by agent to act in business of agency.

Illustrations

(a) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose B names C, an auctioneer, to conduct the sale C is not a sub agent,

> to A from C the recovery

195. In selecting such agent for his principal, an agent is bound Agent's duty to exercise the same amount of discretion as a man of ordinary prudence such person would exercise in his own case, and if he does this he is not responsible to the principal for the acts or negligence of the agent so selected

on raming

Illustrations

(o) A instructs B, a merchant, to buy a thip for him. B employs a thip surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A

No. (b) A consigns goods to B, a merchant, for sale B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds on the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds B is not responsible to A for the proceeds.

Ratification

196. Where acts are done by one person on behalf of another, but Right of without his knowledge or authority, he may elect to ratify or to disown such acts If he ratify them, the same effects will follow as if done for him they had been performed by his authority

without his authority Effect of ratificati n

implied.

197. Ratification may be expressed or may be implied in the con- Ratification duct of the person on whose behalf the acts are done may be expressed or

Illustrations

(Chapter X -Agency)

Knowledge requisite for valid rati fication. Effect of ratifying unauthorized act forming Part of a transaction Ratification of unnuthorized act cannot

injure third

person

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect

Illustrations

(a) A not being authorized thereto by B, demands, on behalf of B, the delivery of a chattle, the protecty of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C limbs for damages for his refers to deliver (b) A holds a lease from B, termnable on three months notice C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Revocation of Authority.

Termination of agency

201. An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency, or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind, or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors

Termination of agency where agent has an interest in aubiect matter

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest

Illustrations

(c) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A A cannot revoke this authority, nor can it be terminated by his insanity or death

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price, the amount of his own advances A cannot revoke this authority, nor is it terminated by his insanity

When frincipal may revoke agrat's authority Revocation wpero

authority has

been partly

exercised.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts. and obligations as arise from acts already done in the agency.

(Chapter A - Agency)

Mustrations

(a) A authorizes B to buy 1 000 bales of cotton on account of A, and to pay for it out of As money remaining in Bs hands B buys 1 000 bales of cotton in his own name so as to make him elf personally hable for the price A cannot revoke B s authority so far

> cunt of A and to pay for it out ales of cotton in As name and A can revoke B s authority to

pay for the cotton

205 Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation 1 to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency with out sufficient cause

Compensa tion for resocution by principal or renuncia tion by agent

206 Reasonable notice must be given of such revocation or renunciation otherwise the damage thereby resulting to the principal or the rescention or agent, as the case may be, must be made good to the one by the other

Notice of renunciation

207 Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively

Revocation an I renuncia tion may be expressed or implied

Illustration

A empo vers B to let A s house Afterwards A lets it himself This is an implied revocation of B s authority

208 The termination of the authority of an agent does not, so far as regards the agent take effect before it becomes known to him, or, so far as regards third persons before it becomes known to them

When ter mination of agent a a itl ority takes effect as to agent an las to thur i

Illustrations

(a) A directs B to sell goods for him and agrees to give B five per cent commission persons on the price fetched by the goods A afterwards by letter revokes Bs authority after the letter is sent but before he receives it sells the goods for 100 rupres

> iouse send h C

probate to his will B after As death but before hearing of it pays the money to C. The payment is good as against D the executor

209. When an agency is terminated by the principal dving or be coming of unsound mind the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him

210 The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination

Agent a duty on termina. tion of agency by principal a death or Insanity Termination

(Chapter 1 - Agency)

agent's authority of an agent's authority) of the authority of all sub-agents appointed by him

Agent's Duty to Principal

Agent's duty in conducting principal s business.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations

- (n) A, an agent engaged in carrying on for B a business in which it is the custom to innest from time to time, at interest the moneys which may be in hand omnts to make such investment. A must make good to B the interest usually obtained by such invest ments.
- (b) B a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C whose credit at the time was very high C, before payment, becomes insolvent B must make good the loss to A

Ekill and diligence required from agent.

(d) 1,

212 An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses, and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or nusconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct

Illustrations

(a) A a merchant in Calcult, his an agent B in Loudon to whom a sum of money a paid on A's account with orders to sent. B returns the money for a considerable that are a sum of the the money, and interest from the day on which it ought to have been paid according to the usual rate and for any further direct loss—as e g, by variation of rate of orchange but not further.

but not further

(b) \ an agent for the sale of goods having authority to sell on credit, sells to B on credit without making the proper and usual enquiries as to the solvency of B B, at the time of such rale, is insolvent A must make compensation to his principal in respect of

any loss thereby sustained (r) A a see that the consequence A is bound

agency to send the cotton comits to do so. The shup arrives safery in augment own sites of arrival the proce of cotton ties. It is bound to make good to A the profit which he might send to the profit when he will be send to the profit when he will be send to the profit when he will be send to the profit when the send to the profit is much have me be by the subsequent rate.

Agent s duty

to comm ni

(Chapter A -Agency)

213 An agent is bound to render proper accounts to his principal Agent's on demand

214 It is the duty of an agent, in cases of difficulty, to use all rea sonable diligence in communicating with his principal, and in seeking to obtain his instructions ¹

principal 215 If an agent deals on his own account in the business of the Picht of agency, without first obtaining the consent of his principal and ac principal when agent quainting him with all material circumstances which have come to his deals on his own I nowledge on the subject, the principal may repudiate the trans own account. in business action, if the case shows either that any material fact has been disof agency without honestly concerled from him by the agent, or that the dealings of the principal s agent have been disadvantageous to him consent

Mustrations

(a) A directs B to sell As estate B buys the estate for himself in the name of C repudiate the sale is the or that the sale has been

estate before selling it e withes to buy the to buy in ignorance mine at the time he

216 If an agent without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction

Illustration

A d rects B his agent to buy a certain house for him. B tells A it cannot be bought abuys the house for himself. A may on d scovering that B has bought the house compel him to sell it to 1, at the price he gave for it.

217 An agent may retain 2 out of any sums received on account of the principal in the business of the agency all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be pay able to him for acting as agent

218 Subject to such deductions the agent is bound to pay to his principal all sums received on his account

219 In the absence of any special contract payment for the per formance of any act is not due to the agent until the completion of

Arent s right of retainer out of sims received on principal s account.

Principal s

tenefit gained by

agent

agency

dealing on l is own account in business of

Agent a duty to pay sums received for principal. When agent are muneration becomes due

• • •

(Chapter A .- Agency)

such act, but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete

Agent not entitled to remuneration for business miscon ducted

Agent a hen

property

Agent to be indem

against con sequences of lawful arts

nifed

220 An agent who is guilty of misconduct in the business of the agency' is not entitled to any remuneration in respect of that part of the business which he has misconducted

• ~ ~ (a) A employs P B recovers the 100 -10 000 rupees on sec ---

Through B s misconduct the money

the loss

. ..

his services and must make good

221. In the absence of any contract to the contrary, an agent is on principal's entitled to retain goods, papers and other property, whether moveable or immoverble, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him 2

Principal's duty to Agent

222 The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him

Illustrations

	D 10	- •	 	**
cert				
cont				
the -				
77 /		me a nd property		
	٠,			
				54

contracts with C to deliver C sues B for breach of fend the suit B defende s expenses A is liable to-

ant there contracts with C ses to receive the oil and C B defends but unsuccess

fully and has to pay damages and costs and meurs expenses 1 is liable to B for such damages costs and expenses

223 Where one person employs another to do an act, and the agent Agent to does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons

be indem nifed acainst con provences of acts done In good faith.

See e q , so 105 211 212 213 214 218 supra
As to the general lien of the agent who is a banker factor attorney or policy broker, ece s. 171, eupra

(Chanter X -Agency)

Illustrations

(a) A. a decree holder and entitled to execution of B s goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B The officer seizes the goods and is sued by C, the true owner of the goods A is liable to indeminify the officer for the sum which he is compelled to pay to C, in consequence of obeying A s directions

(b) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of B does not know this, and hands over the proceeds of the sale to A Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs A is hable to indemnify B for what he has been compelled to pay to C and for B s own expenses

224. Where one person employs another to do an act which is cri- Non habit minal, the employer is not liable to the agent, either upon an express "places of or an implied promise to indemnify him against the consequences of agent to do that act 1

a criminal

Mustrations

(a) A employs B to beat C, and agrees to indemnify him against all consequences of the act B thereupon beats C, and has to pay damages to C for so doing A is not liable to indemnify B for those damages (b) B, the proprietor of a newsran - - 11 ch - - 4 4' ---- ct - 11 1 ---- " n the paper, and A agrees to indemnity and all costs and damages of any action pay

damages, and also incurs expenses

225. The principal must make compensation to his agent in respect Compenof injury 2 caused to such agent by the principal's neglect or want of agent for skill

injury caused by principal's neglect

Illustration

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hint. A must make com pensation to B Effect of agency on contract with third persons.

226. Contracts entered into through an agent, and obligations Enforce arising from acts done by an agent, may be enforced in the same man-ment and ner, and will have the same legal consequences, as if the contracts had of agent's been entered into and the acts done by the principal in person.

consequences

Illustrations

(a) A buys goods from B, knowing that he is an agent for their sale, but not knowing

to B

227. When an agent does more than he is authorized to do, and Procept when the part of what he does, which is within his authority, can be bound when separated from the part which is beyond his authority, so much only agent of what he does as is within his authority is binding as between him authority. and his principal.

See a 24, aupra Cf the Indian Fatal Accidents Act, 1855 (XIII of 1855), General Acts. "

(Chapter A -Agency)

Illustration

A, being owner of a ship and cargo authorizes B to procure an insurance for 4000 rupees on the ship B procures a policy for 4 000 rupees on the ship and another for the like sum on the cargo A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo

Prine pal net bound when excess of agent s authority is not separable

228 Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the trans action

Illustration

A authorizes B to buy 500 sheep for him B buys 500 sheep and 200 lambs for one sum of 6 000 rupees A may repudiate the whole transaction

Consequences of not ca given to agent

229 Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third pai ties, have the same legal consequence as if it had been given to or ch tained by the principal

Illustrations

(a) A is en and buys them goods really be * which C is the apparent owner, or the sale A learns that the B is not entitled to set off a

debt owing to (6) A 13 C

h C is the apparent owner A was before he was so employed a servant of C, and then learnt that the goods really belonged to D but B is ignorant of that fact. In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C

Agent cannot personally enforce, nor be bound by contracts on behalf of

230 In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his prin cipal nor is he personally bound by them

principal Presumption of contract to contrary

Such a contract shall be presumed to exist in the following cases -

- (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad
 - (2) where the agent does not disclose the name of his principal
 - (3) where the principal, though disclosed, cannot be said

R ghts of parties to a contract made by agent not d sclosed

231 If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract, but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can (Chapter X -Agency)

show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract

232 Where one man makes a contract with another, neither know- Performance ing nor having reasonable ground to suspect that the other is an agent, of contract the principal, if he requires the performance of the contract, can only supposed to obtain such performance subject to the rights and obligations subsisting be principal. between the agent and the other party to the contract

with agent

Illustration

A who owes 500 rupees to B sells 1 000 rupees worth of rice to B A is acting as agent for C in the transaction but B has no knowledge nor reasonable ground of suspicion that such is the case C cannot compel B to take the rice without allowing him to set off As debt

233 In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable

Pight of person dealmo with agent personally liable.

Illustration

A enters into a contract with B to sell him 100 bales of cotton and afterwards dis covers that B was acting as agent for C A may sue either B or C, or both for the price of the cotton

234 When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held of inducing; liable, or induces the principal to act upon the belief that the agent only will be held liable he cannot afterwards hold liable the agent act on belief or principal respectively

Consequence agent or principal to that principal or agent will be held exclusively

235 A person untruly 1 representing himself to be the authorized Lubility of agent of another, and thereby inducing a third person to deal with pretended him as such agent, is liable, if his alleged employer does not ratify his acts, to male compensation to the other in respect of any loss or damage which he has incurred by so dealing

hable agent.

236 A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent but on his own account

falsely contracting as agent not entitled to

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct belief that

performance. Liability of principal

(Chapter X - Agency. Chapter XI - Of Partnership)

agent's un authorized acts were anthorized.

induced such third persons to believe that such acts and obligations were within the scope of the agent's authority

Illustrations

(a) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price C, being ignorant of B is instructions, enters into a contract with B to buy the goods at a price lower than the reserved price A is bound by the contract (b) A entrusta B with negotiable instruments endorsed in blank B sells them to C in violation of private orders from A The sale is good

Effect, on agreement. of misre presentation or fraud by agent

238. Misiepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals 1, but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals

Illustrations

(a) A being B's agent for the sale of goods, induces C to buy them by a misrepresen tation, what he we B and (6)

the got tended consignor

drng without having received on board are void as between B and the pre

CHAPTER XI.

OF PARTNERSHIP.

" Purtner ship " defined

239. "Partnership" is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business, and to share the profits thereof between them

" Firm " defined.

Persons who have entered into partnership with one another are called collectively a "firm".

Mustrations

(a) A and B buy 100 bales of cotton, which they agree to sell for their joint account, A and B are partners in respect of such cotton
(b) A and B buy 100 bales of cotton agreeing to share it between them. A and B

are not partners (c) A agrees with B, a goldsmith to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss A and B are partners

(d) A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B A and B are not partners (e) A and B are joint owners of a ship. This circumstance does not make them partners

Contract

(Chanter AI -Of Partnership)

240. A loan to a person engaged or about to engage in any trade Lendernota or undertaking, upon a contract with such person that the lender shall partner by receive interest at a rate varying with the profits or that he shall re- money for ceive a share of the profits, does not, of itself, constitute the lender a share of partner, or render him responsible as such

241. In the absence of any contract to the contrary, property left Property by a retiring partner, or the representative of a deceased partner, to be used in the business is to be considered a loan within the meaning by retiring of the last preceding section

leit in husmess partner or deceased partner 8

242 No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking, by a share of the profits murerated of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a apartner partner

representa tive Servant or agent re by chare of profits not

243 No person, being a widow or child of a deceased partner of a Widow or trader and receiving, by way of annuity, a proportion of the profits child of made by such trader in his business, shall, by reason only of such re-partner ceipt, be deemed to be a partner of such trader, or be subject to any receiving liabilities incurred by him

deceased annuity out of profits not a partner

244 No person receiving by way of annuity or otherwise, a por- Person re tion of the profits of any business, in consideration of the sale by him of the good will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his habilities 1

cerving portion of profits for sale of good will not a partner

245 A person who has, by words spoken or written or by his con duct, led another to believe that he is a partner in a particular firm, is responsible to him as partner in such firm

Responsibil ity of person leading another to believe bim a partner

246 Any one consenting to allow himself to be represented as a Liability of partner is liable, as such, to third persons who, on the faith thereof give credit to the partnership

person per mitting him or'f to be

247 A person who is under the age of majority according to the Vinor law to which he is subject " may be admitted to the benefits of partner ship but cannot be made personally liable for any obligation of the firm but the share of such minor in the property of the firm is liable for the obligations of the firm

represented as a partner partner not reconally hable but his share is,

¹ C/ the Partnership Act 1865 (23 & 29 Vict c 86) a 4 See the Indian Majority Act, 1875 (I) of 1875) infra

(Clapter XI - Of Partnership)

Liability
of minor
partner on
attaining
majority

Partner s hab lity for debts of partnership

Partner s
Jubility to
third person
for neglect

or fraud of co-partner Partner s

power to

co partners

batà

248 A person who has been admitted to the benefits of partnership under the age of majority 1 becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership

249 Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership, but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner

250 Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm

251 Each partner who does any act necessary for, or usually done in carrying on the business of such a partnership as that of which he is a member binds his co partners to the same extent as if he were their agent duly appointed for that purpose

Exception —If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contrivention of such agreement shall bind the firm with respect to persons having notice of such agreement

Illustrations

(a) A and B trade in partnership A residing in England and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill nor is he at

(c) A and B carry by A on behalf of the

ed P nd of

Annulment of contract defining partners rights and oblight ons 252 Where partners have by contract regulated and defined, as between themselves their rights and obligations such contract can be annulled or altered only by consent of all 2 of them which consent must either be expressed, or be implied from a uniform course of dealing

Illustrat on

A B and C intending to enter into partnersh p execute written articles of agreement by which it is stimulated that the nett profits at sing from the partnersh business shall be equally divided between them. Afterwards they carry on the partnership business for

See the Indian Ma onty Act 1875 (1\ of 1875) infra

(Chapter XI - Of Partnership)

many years, A receiving one half of the nett profits and the other half being divided equally between B and C. All parties know of and acquisece in its arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

253. In the absence of any contract to the contrary the relations of Rules deter partners to each other are determined by the following rules -

mining partners' mutual relat one. contrary

- (1) all partners are joint owners of all property originally brought into the partnership stock, or bought with money where no belonging to the partnership, or acquired for purposes of contract to the partnership business. All such property is called partnership property The share of each partner in the partnership property is the value of his original contribu tion, increased or diminished by his share of profit or loss
- (2) all partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership
- (3) each partner has a right to take part in the management of the partnership business
- (4) each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business
- (5) when differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners, but no change in the nature of the business of the partnership can be made, except with the consent of all the partners 1
- (6) no person can introduce a new partner into a firm without the consent of all the partners
- (7) if from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members
- (8) unless the partnership has been entered into for a fixed term, any partner may retire from it at any time
- (9) where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court
- (10) partnerships, whether entered into for a fixed term or not. are dissolved by the death of any partner

ship in the following cases -

254. At the suit of a partner the Court may dissolve the partner. When Court may dissolve partnership.

(1) when a partner becomes of unsound mind

(Chapter A1 -Of Partnerslap)

- (2) when a partner, other than the partner sung, has been ad judicated an insolvent under any law relating to in solvent debtors
- (3) when a partner, other than the partner suring, has done any act by which the whole interest of such partner is legally transferred to a third person
- (4) when any partner becomes incapable of performing his part of the partnership contract
- (5) when a partner other than the partner sung, is guilty of gross misconduct in the affairs of the partnership or to wards his partners
- (6) when the business of the partnership can only be carried on at a loss

255 A partnership is in all cases dissolved by its business being prohibited by law

256 If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner

257 Partners are bound to carry on the business of the partner ship for the greatest common advantage to be just and faithful to each other, and to render true accounts and full information of all things

affecting the partnership to any partner or his legal representatives 258 A partner must account to the firm for any benefit derived trom a transaction affecting the partnership

Illustrations

ship by prohibition of business Rights and obligations of partners in partner ship continued after ex pary of term for v hich it was entered into

Dissol tion of partner

Coneral duties of partners

Account to frr of bene ft derived from transaction affecting partner ship.

Ob! gations to fr of partner carrying on 259 If a partner, without the knowledge and consent of the other partners carries on any busness competing or interfering with that of the firm, he must account to the firm for all profits made in such

(Chapter XI - Of Partnership)

business, and must make compensation to the firm for any loss occasioned thereby

competing businesa

260. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given 1

Respection of continuing guarantee by change in firm

261. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death

Non liability of deceased partner s estate for subsequent obligations Payment of partnership debts, and of separate

262. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner must he applied in payment of his separate debts or paid to him separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm

263. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the busi ness of the partnership 264. Persons dealing with a firm will not be affected by a dissolu

Continuance of partners rights and obligat ons after dissolu tion Notice of

tion of which no public notice has been given, unless they themselves had notice of such dissolution 265 Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated, the Court may, in the absence of any contract to the contrary, wind up the business of the partnership, provide for the payment of its debts and distribute the

dissolution Wanding up by Court on dissolu

surplus according to the shares of the partners respectively 266. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships and joint-stock companies, shall be regulated by the law for the time boing in force relating thereto 3

tion or after tern mation I in ited

liability part nerships, in corporated partnerships an l joint. stock companies.

Contract

[1872 : Act IX.

(Schedule)

SCHEDULE.

ENACTMENTS REPEALED

Statutes.

No and year of Statute	Trile	Extent of repeal
Stat 29 Car II, cap 3	An Act for prevention of Frauds and Perjuries	Sections 1, 2 3, 4 and 17.
Stat 11 & 12 Vict, cap 21	To consolidate and amend the law relating to in- solvent debtors in India	Section 42

Acts.

Title	Extent of repeal
An Act for the amendment of the law regarding	The whole
chap 91	1
An Act for rendering a written memoi indum necessary to the validity of certain promises and en age ments by estending to the territories of the Ext. India Company, in cases governed by English law, the provisions of the Statute 9 Geo IV, Chap 14.	The whole
وروب سائل منسدنات سائد برييا	The whole
altered by this Act	l
An Act for avoiding Wagers .	The whole
An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the Commercial law of British India	Sections 9 and 10
An Act to amend the law of Partnership in India	The whole
An Act to amend the law relating to Horse racing in India	The whole
	An Act for the amendment of the law regarding that the same of the law regarding to the relating of certain promises and on age to the relating of certain promises and on age to the relation of the territories of the East India Company, in cases governed by English law, the provinces of the Statute 9 Geo IV, Chap I' and the provinces of the Statute 9 Geo IV, Chap I' all the provinces of the Statute 9 Geo IV, Ch

THE INDIAN CHRISTIAN MARRIAGE ACT, 1872

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- 73 Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome), issuing certificate, or marrying, without publishing notice, or
 - after expiry of certificate, issuing certificate for, or solemnizing, marriage with minor within fourteen days after notice,

issuing certificate authorizedly forbidden

solemnizing marriage authorizedly forbidden

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ACT No XV of 1872 1

[18th July 1872]

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians

Whereas it is expedient to consolidate and amend the law relating Preamble

tte of Ind a 1871 Pt. V p 473 1077 th d 1871 Supplement 17 805 813 and 858. This Act

in India and are now no longer in force) and Acts \ of 1852 and \ of 1855, the last

(Prelininary)

to the solemnization in India of the marriages of persons professing the Christian religion, It is hereby enacted as follows —

PRELIMINARY.

Short title

This Act may be called the Indian Christian Marriage Act, 1872
 It extends to the whole of British India, and, so for only as regards Christian subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty

[Commencement] Rep by the Repealing Act, 1874 (XVI of 1874)

Enactments repealed. 2 The enactments specified in the fifth schedule hereto annexed are repealed, but not so as to invalidate any marriage confirmed by, or solemnized under, any such enactment

And all appointments made, licenses granted, consents given, certificates issued, and other things duly done under any such enactment shall be deemed to be respectively made, granted, given, issued and done under this Act

For clause XXIV of section 19 of the Court fees Act, 1870,2 the following shall be substituted—

"XXIV Patties and the Indian Christian Farriage Act, 1872.

"XIV, Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48"

Interpretation clause 3. In this Act, unless there is something repugnant in the subject or context.—

"Church of England" and "Anglican" mean and apply to the

Church of England as by law established, 'Church of Scotland' means the Church of Scotland as by law established.

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head.

"Church" includes any chapel or other building generally used for public Christian worship,

"minor" means a person who has not completed the age of twentyone years and who is not a widower or a widow,

^{&#}x27;Act \V of 1872 has been declared in force in Upper Burma generally (except the ode \ \off (I of ment \ gula uled

^{1876 1} t 1 p 505] lled the Ranchi District (see Cilcutta Gazette e the Palamau D strict which was separated in

brow

(Preliminary Part I -The Persons by whom Marriages may be solemnized)

"Native State" means the territories of any Native Prince or State in alliance with Her Majesty.

the expression "Christians" means persons professing the Christian religion.

and the expression "Native Christians" includes the Christian descendants of Natives of India converted to Christianity, as well as such converts

"I" Registrar General of Births, Deaths and Marriages" means a Registrar General of Births, Deaths and Mariages appointed under the Births, Deaths and Marriages Registration Act, 1886]

PART I

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMAIZED

4 Every marriage between persons, one or both of whom is for Muriages to arel a Christian or Christians shall be solemnized in accordance with be solemnize the provisions of the next following section, and any such marriage let solemnized otherwise than in accordance with such provisions shall be

according to

Persons by whom mar

ringes may

be solen

- 5 Marriages may be solumnized in India-
 - (1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of

nized which he is a Minister, (2) by any Cleres man of the Church of Scotland provided that such marriage be solemnized according to the rules, rites.

- ceremonies and customs of the Church of Scotland, (3) by any Minister of religion licensed under this Act to
- solemnize marriages. (4) by or in the presence of, a Marriage Registrar appointed
- under this Act, (5) by any person licensed under this Act to grant certificates of mairiage between Native Christians
- 3 6 The Local Government 4 so far as regards the territories under Crantani

revocate n of

[&]quot;This paragraph was added by the births D aths and Marnages Pegistration Act, 1836 (M of 1869) s 00 cf (a) Ge cral tets Vol. III 1836 (M of 1891) c 2 1 few vords vere; erf d by the Pepcal mg and Amend mg M t 1891 (MI of 1891)

n Christian Marria e 1 of 11 under the sowers con ices and Oudh Last of

(Part I. - The Persons by whom Marriages may be solemnized)

licenses to sofemnize marriages. its administration, and the Governor General in Council, so far as regards any Native State, may, by notification in the local official Gazette or in the Gazette of India, as the case may be, grant licenses 1 to Ministers of Religion to solemnize marriages within such territories and State, respectively, and may, by a like notification, revoke such licenses

Marriage Registrars

7. The Local Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars 2 for any district subject to its administration

Senior Mar ringe Regis trar

Where there are more Marriage Registrars than one in any district, the Local Government shall appoint one of them to be the Sensor Marriage Registrar

Magistrate when to be Marriago Registrar

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the district shall act as, and be, Marriage Registrar thereof during such absence, illness or temporary vacancy

Marriago Registrars ın Natıve States

8 The Governor General in Council may, by notification in the Gazette of India, appoint any Christian, either by name or as holding any office for the time being, to be a Marriage Registrar in respect of any district or place within the territories of any Native Prince or State in alliance with Her Majesty

The Governor General in Council may, by like notification, revoke any such appointment

Licensing of nersons to grant certs ficates of marriago between Native

Christians.

9 The Local Government or (so far as regards any Native State) the Governor General in Council may grant a license to any Christian. either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette

As to validation of licenses granted under former Acts, see the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), s 1 (2) and (3), General Acts, Vol II For notifications under the powers conferred by this section in—

see A1 R & O

⁽¹⁾ Ajmer Verwara
(2) Bombay
(3) British Baluchistan
(4) Burma
(5) Central Provinces
(6) Punjab see Bom R & O , see Gazette of India, 1892 Pt II, p 53,

⁽⁶⁾ Punjab
(7) Central Provinces
(6) Punjab
(7) United Provinces of Agra

see Bur R M,
see Bur R M,
see C P R & O,
see Punj R of Local Rules and Orders Ed 1894

^{*} For instances of such licenses granted in Burma, see Burma Gazette 1899. Pt 1. p 284

Commissary.

(Part II.-Time and Place at which Maritages may be solemnized)

PART II.

Time and Place at which Marriages may be solemnized

10. Every marriage under this Act shall be solemnized between Time for the hours of six in the morning and seven in the evening

solemnizing t marriage Exceptions.

Provided that nothing in this section shall apply to-

- (1) a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or
- (2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license, 'for
- (3) a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of the Church of Scotland?
- 11. No Clergyman of the Church of England shall solemnize a Pice for marriage in any place other than a church 2[where worship is generally solemn zing held according to the forms of the Church of England unless there is no "[such] church within five miles distance by the

marr age

shortest road from such place, or unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his

For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes

Fee for *pecul license

¹ This portion was added by the Indian Christian Marriage 1ct (1872) Amendment Act, 1891 (II of 1891), s 2 General Acts Vol IV These words were added by the Indian Christian Marriage Act (1872) Amendment Act 1891 (II of 1891) s 3 abid "The word " such " was inserted by the Indian Christ an Marriage Act (1872) Amend ment Act; 1691 (IL of 1891), s 3, 181d

(Part III - Marriages solemnized by Unisters of Religion licensed under this Act)

PART III

MARRIAGES SOIEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT

Notice of intended marringe 12 Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto anneved, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein—

- (a) the name and surname, and the profession or condition, of each of the persons intending marriage,
- (b) the dwelling place of each of them,
- (c) the time during which each has dwelt there, and
- (d) the church or private dwelling in which the marriage is to

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month it may be stated therein that he or she has dwelt there one month and upwards

Publication of such notice 13 If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause

Return or transfer of notice the notice to be affixed in some conspicuous part of such church.

But if he is not entitled to officiate as a Minister in such church, he shall at his option, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as

Notice of intended marriage in private due haz aforesard

14 If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the district, who shall affix the same to some conspicuous place in his own office.

I notice to
Mirriage Regi trar wich
one party is
a minor

15. When one of the persons intending marriage is a minor, every Minister receiving such notice shall, indiess within twenty four hours rifer its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Rigistrir of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar

Procedure on receipt of notice 16 The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall after it to some conspi-

(Part III - Marriages solemnized by Ministers of Religion licensed under tlas Act)

cuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall lilewise publish the same in the manner above directed

17 Any Minister of Religion consenting or intending to solemnize Issue of cer any such marriage as aforesaid shall on being required so to do by or tificate of on behalf of the person by whom the notice was given, and upon one and declara of the persons intending marriage making the declaration hereinafter tion made required, issue under his hand a certificate of such notice having been given and of such declaration having been made

notice given

Proviso.

Provided-

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister.

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue, and

(3) that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf

18 The certificate mentioned in section 17 shall not be issued until Declaration one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration-

before issue of certificate

(a) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage.

and, when either or both of the parties is or are a minor or minors,

(1) that the consent or consents required by law has or have been obtained thereto or that there is no person resident in India having authority to give such consent, as the case may be

19 The father, if living of any minor or if the father be dead, the Consent of guardian of the person of such minor, and in case there be no such fatter or guardian, then the mother of such minor, may give consent to the minor's marriage,

guardian or

and such consent is bereby required for the same marriage, unless no person authorized to give such consent be resident in India

20 Ivery person whose consent to a marriage is required under Power to section 19 is hereby authorized to prohibit the issue of the certificate Irohibit by by any Minister, at any time before the issue of the same by notice in of certificate writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either

[1872 : Act XV.

(Part III. — Marriages solemnized by Ministers of Religion licensed under this Act Part IV — Registration of Marriages solemnized by Ministers of Religion)

of the persons intending marriage, by reason of which he or she is so authorized as aforesaid

Procedure on receipt of notice

Issue of cer

tificate in

case of minority 21. If any such notice be received by such Minister, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition,

or until the said notice is withdrawn by the person who gave it

22 When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19 has been obtained, such Minister shall not issue such certificate until the expiration of fourteen

Issue of cer tificates to Native Chris tians days after the receipt by him of the notice of marriage
23. When any Native Christian about to be married takes a notice
of marriage to a Minister of Religion, or applies for a certificate from
such Minister under section 17, such Minister shall, before issuing
the certificate, ascertain whether such Native Christian is cogmizant
of the purport and effect of the said notice or certificate, as the case
may be, and, if not, shall translate or cause to be translated the notice
or certificate to such Native Christian into some language which he
understands

Form of certifeate 24. The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect

Solemnıza tion of mar ringe 25 After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt

Provided that the marriage be solemnized in the presence of at

least two witnesses besides the Minister

Certificate vol.14

26. Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as afcrossaid, seclemented within two months and no person shall proceedings (if any) thereon shall be void, and no person shall proceed to solemnize the said marriage until

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner

new notice has been given and a certificate thereof aforesaid

PART IV

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION

27. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except

Marriages when to be registered. (Part IV - Registration of Marriages solemnized by Ministers of Religion)

marriages solemnized under Part V or Part VI of this Act, shall be registered 1 in manner hereinafter prescribed

28. Every Clergyman of the Church of England shall keep a register Registration ot marriages and shall register therein, according to the tabular form of marriages solen nized set forth in the third schedule hereto annexed, every marriage which by clergy he solemnizes under this Act

men of Church of England Quarterly

29. Every Clergyman of the Church of England shall send four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized at any place where Archdea he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate

returns to conry

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirtyfirst day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September. and from the first day of October to the thirty-first day of December. of each year respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified

Contents of

The said Registrar upon receiving the said returns shall send one copy thereof to the 2 Registrar General of Births. Deaths and Marriagee]

30. Every mairiage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized,

Registration and returns of marriages solemnized by Clergy men of Church of Rome

and such person shall forward quarterly to the 2[Registrar General of Births, Deaths and Marriages | returns of the entries of all marriages registered by him during the three months next preceding

31. Every Clergyman of the Church of Scotland shall keep a register of marriages and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he

Registration and returns of marriages solemnized by Clergy men of Church of Scotland.

solemnizes under this Act, and shall forward quarterly to the "[Registrar General of Births Deaths and Marriages] through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section 29, of all such marriages

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rri ges to stered duplicate

32 Every marriage solemnized by any person who has red episcopal ordination, but who is not a Clergyman of the Churk, ah England, or of the Church of Rome, or by any Minister of Relig licensed under this Act to solemnize marriages, shall, immediate after the solemnization thereof, be registered in duplicate by the persi solemnizing the same, (that is to say) in a marriage register book to kept by him for that purpose, according to the form contained in th fourth schedule hereto annexed, and also in a certificate attached the marriage register book as a counterfoil

h mar ages to be gned and

33 The entry of such marriage in both the certificate and marriag register book shall be signed by the person solemnizing the marriage and also by the persons married and shall be attested by two credibl witnesses, other than the person solemnizing the marriage, present a its solemnization

Every such entry shall be made in order from the beginning to th end of the book, and the number of the certificate shall correspond wit

that of the entry in the marriage register book

Artificate to e forwarded o Marriago

pred and ++0 egistrar

34. The person solemnizing the marriage shall forthwith separat the certificate from the marriage register book and send it, within on month from the time of the solemnization, to the Marriage Registra of the district in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be

kent by him for that purpose,

and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are heremafter required, to the 'Registrar General of Births, Deaths

and Marriages

Copies of certificates to be entered and num bered.

35 Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate

Regutrar to add nun ber of entry to certifi ate an I send to Registrar General Registration or marriages ł etween

Native Ches

36 The Marriage Registrar shall also add such last mentioned number of the entry of the copy in the book to the certificate with his signature or initials, and shall, at the end of every month, send the same to the '[Registrar General of Births, Deaths and Marriages]

37 When any marriage between Native Christians is solemnized under Part I or Part III of this Act, the person solemnizing the same shall instead of proceeding in the manner provided by sections

10 10

(Part 11 -Registration of Marriages solemnized by Ministers of Religion marriart V - Marriages solemnized by, or in the presence of, a Marriage regisRegistrar)

to 36, both inclusive, register the marriage in a separate register book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, disposal of shall make over the same to the person succeeding to his duties in the said district

tions under Part I or IIL Custody and register book.

Whoever has the control of the book at the time when it is filled shall send it to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the '[Registrar General of Births, Deaths and Marriages,] to be kept by min with the records of his office

PART T

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR

38 When a marriage is intended to be solemnized by, or in the solvers presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schein's your te hereto annexed, or to the like effect to any Marriage Registrar of the District within which the parties have dwelt,

or, if the parties dwell in different districts, shall give the lile notice to a Marriage Registrar of each district.

and shall state therein the name and surname, and the prof 2,3,07 or condition, of each of the parties intending marriage, the dwelling. place of each of them, the time during which each has dwelt there. and the place at which the marriage is to be solemnized

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that Le co she has dwelt there one month and upwards

39 Licry Mairiage Registrar shall, on receiving any such 2 17 17 17 cause a copy thereof to be affixed in some conspicuous place in Last files. When one of the parties intending marriage is a mine,

Marriage Registrar shall, within twenty four hours after the reserving him of the notice of such marriage, send, by post or otherwise, 2 ---of such notice to each of the other Marriage Registrars (if at) same district, who shall lilewise affix the copy in some place in his own office

40. The Marriage Registrar shall file all such notices 227 100 1000 with the records of his office.

(Part V-Maritages solemnized by, or in the presence of, a Marriage Registiar)

Marriage Notice Book and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Local Government, and to be called the "Marriage Notice Book".

and the Marriage Notice Bool shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same

Certificate of notice given and oath made 41 If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made

Provided-

that no lawful unpediment be shown to his satisfaction why such certificate should not issue,

that the issue of such certificate has not been forbidden, in mannerhereinafter mentioned, by any person authorized in that behalf by this Act.

that four days after the receipt of the notice have expired, and further.

that where, by such eath it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired

Oath before iss e of sertificate

- 42 The certificate mentioned in section 41 shall not be issued byany Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath
 - (a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and
 - (b) that both the parties have or (where they have dwelt in the districts of different Marriage Registrus) that the party making such oath bas, had their, his or her usual place of abode within the district of such Marriage Registrar,

and, where either or each of the parties is a minor,-

(c) that the consent or consents to such marriage required by law has or have been obtained thereto or that there is no person resident in India authorized to give such consent, as the case may be

Petition to High Court to order certificate in less

43 When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay, and are desirous of being married in less than

[&]quot;As to meaning of 'oath see the General Clauses Act 1897 (A of 1897) s 3 cl.. (35) and s 4 General Acts Vol IV

4Part T - Warriages solemnized by, or in the presence of, a Marriage Registrar)

fourteen days after the entry of such notice as aforesaid, they may than for ricen apply by petition to a Judge of the High Court, for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section 41

And, on sufficient cause being shown, the said Judge may, in his Order on discretion, make an order upon such Marriage Registrar, directing him to assue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required

And the said Marriage Registrar, on receipt of the said order. shall assue his certificate in accordance therewith

44. The provisions of section 19 apply to every marriage under this Convent of Part, either of the parties to which is a minor.

father or guardian. of certificate

and any person whose consent to such marriage would be required Protest thereunder may enter a protest against the issue of the Marriage against issue Registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized

When such protest has been entered, no certificate shall issue until Effect of the Marriage Registrar has examined into the matter of the protest. and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it

45 If any person whose consent is necessary to any marriage under Petition this Part is of unsound mind.

where person whose con

or if any such person (other than the father) without just cause sent is neceswithholds his consent to the marriage,

sarv is in sane or un justly with. holds con.

the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras and Bombas, to a Judge of the High Court, or if he is not resident within any of the said towns, then to the District Judge

on petition,

And the said Judge of the High Court, or District Judge, as the Procedure case may be, may examine the allegations of the petition in a summary

and if upon examination such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall -declare the marriage to be a proper marriage

(Part V - Marriages solemnized by, or in the presence of, a Mairiage Registrar)

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage.

and, if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden

Petition when | Marriage Registrar | refused certificate 46. Whenever a Marriage Registrar refuses to issue a certificateunder this Part, either of the parties intending marriage may apply by petition, where the civitric of such Registrar is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge

Procedure on petition The said Judge of the High Court, or District Judge, as the casemay be, may examine the allegations of the petition in a summary way, and shall decide thereon

The decision of such Judge of the High Court or District Judge, as the case may be, shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith

Petition when
Marriage
Reg strar in
Native State
refuses
certificate

47 Whenever a Marriage Registrar resident in any Native State refuses to issue his cetrificate, either of the parties intending marriagemay apply by petition to the Governor General in Council, who shall decide thereon

Such decision shall be final, and the Varriage Registrar to whom the application was originally made shall proceed in accordance there-

Petition when Registrar doubts 4 authority 7 of person 3 forbidding 48 Whenever a Marriage Registrar, acting under the provisions of section 44, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition, where his district is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or, if such district be not within any of the said towns, then to the District Judge

Proce lare on petition The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same.

and the said Judge of the High Court or District Judge, as the case may be shall examine into the allegations of the petition and the circumstances of the case.

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such ludge of the High Court or District Judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid. (Part V - Marriages solemnized by, or in the presence of, a Maritage Registral)

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not heen forbidden

Whenever a Marriage Registrar appointed under section 8 to act Reference within any Native State is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Recestrar Registrar shall send a statement of all the circumstances of the case, State doubts together with all documents relating thereto, to the Governor General a thorny in Council

of person forbidding Procedure of reference

If it appears to the Governor General in Council that the person forbidding the issue of such certificate is not authorized by law so to do, the Governor General in Council shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue of the certificate had not been forbidden

49 Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate, on grounds which such Marriage Registrar, under section 44, or a Judge of the High Court or the District Judge, under section 40 or 46 declares to be frivolous and such as ought not to obstruct the issue of the certificate. shall be liable for the costs of all pioceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered

Lish lity for fravolous rotest against 13 tue of certificate

50. The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the second schedule to this Act annexed or to the like effect,

Form of cer tificate

and the Local Government shall furnish to every Marriage Registrar

a sufficient number of forms of certificate

51 After the issue of the certificate of the Marriage Registrar, or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the

certificates of the Marriage Registrars for such districts. marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates le solemnized between them, according to such form and ceremony as they think fit to adopt

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar

Sofemniza. tion of mar ringe after 19sue of cer tif cate

(Part F - Marriages solemni el bj oi in the presence of, a Marriage Registrar)

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect —

"I do solemnly declare that I know not of any lawful impediment why I, A B, may not be joined in matrimony to C D"

And each of the parties shall say to the other as follows or to the like effect —"I call upon these persons here present to witness that I,

A B do take thee, C D, to be my lawful wedded wife [or husband]"
52 Whenever a marriage is not solemnized within two months after
the copy of the notice has been entered by the Marriage Registrar, as
required by section 40, the notice and the certificate, if any, issued

thereupon, and all other proceedings thereupon, shall be void, and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrat enter the same until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid

53 A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to Le married the several particulars required to be registered touching such marriage

54 After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate, that is to say, in a marriage register book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the marriage register book as a counterfoil

The entry of such marriage in both the certificate and the marriage register book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible winesses other than the Marriage Registrar and person solemnizing the marriage

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage register book

55 The Marriage Registrar shall forthwith separate the certificate from the marriage register book and send it, at the end of every month, to the '[Registrar General of Births, Dethis and Marriages]

The Marriage Registrar shall keep safely the said register book until it is filled and shall then send it to the "[Registrar General of Births, Deaths and Marriages], to be kept by him with the records of his office

When mar riage not had within two months after notice new notice required

Marr age Registrar may ask for particulars to be regis tered Pegistration of a arriage solemoized un ler Part

Cert feates to be sent monthly to Peg strar Ceneral Cistody of reg ter book,

The cords ere substitted for the virds Secretary to the Loc I Covernment by the Births Deaths and Marriages Pegistration let 1836 (VI of 1836) s 30 cl (b) General Acts Vol III

1872 : Act XV.1

(Part T .- Marriages solemnized by, or in the presence of, a Marriage Registrar Part II - Marriage of Native Christians

56 The Marriage Registrars in Native States shall send the certificates mentioned in section 54 to such officers as the Governor General in Council from time to time, by notification in the Gazette of India, appoints in this behalf 1

Officers to whom Regis-Native States shall send certificates Recistrars to ascertain that notice and certificate are understood by Native Christians.

57. When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar. such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Native Christian into a language which he understands.

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate

58. When any Native Christian is married under the provisions of Native Chris this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he derstand do does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act

tians to be made to un clarations.

59 The registration of marriages between Native Christians under Registration this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable), and not otherwise

of marriages between Native Chris.

PART VI 2

MARRIAGE OF NATIVE CHRISTIANS

80. Every marriage between Native Christians applying for a On what concertificate shall, without the preliminary notice required under Part III, riacra of

Cf s 24 () of the Brths Deaths and Marriages Pegistration Act 1886 (VI of 1886) General Acts Vol III

appointed under this section for the nor General Central Ind a Agency, I) Ed 1899 p 45 the Regi trar r the Misore State see abid (Mad for the Hyderabad State, see abid

^{&#}x27;s to validation of past marriages solemnized under Part VI between persons of whom one only was a Nat re Christian and penalty for solemning such marriages under Part 11 in future see the Marriages Validation 1ct 1832 (II of 1839) General Acts, Vol 1V

vative Chris tans n ay be ertified.

Grant of certificate

Keeping of register book

and denos t

of extracts therefrom

with Reg .

trar Ceneral

(Part VI - Marriage of Natire Christians) be certified under this Part, if the following conditions be fulfilled, and not otherwise -

- (I) the age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years
- (2) neither of the persons intending to be married shall have a wife or husband still hving,
- (3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other-
 - I call upon these persons here present to witness that I, A B, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, C D, to be my lawful wedded wife for husband] ' or words to the like affect

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year unless such consent as is mentioned in section 19 has been given to the intended marriage or unless it appears that there is no person living authorized to give such consent

61 When in respect to any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled the person licensed as aforesaid in whose presence the said declaration has been made shall on the application of either of the parties to such marriage, and on the payment of a fee of four annas grant a certificate of the marriage

The certificate shall be signed by such licensed person and shall be received in any suit touching the validity of such marriage as con clusive proof of its having been performed

162 (1) Every person licensed under section 9 shall keep in Eng lish, or in the vernacular language in ordinary use in the district or-State in which the marriage was solemnized and in such form as the Local Government by which he was licensed may from time to timeprescribe,2 a register book of all marriages solemnized under this Part

the original's 62 (relating to the keeping and form rist an Marriage 1ct (1872) \text{\text{mendment}} 1ct 1891

po ers conferred by this section in-901 Pt II p 397

⁴ et trigio to seco PR & O 55 Punjib et I nj R & O 61 the United I pro neces of Ngra and Oldh sec North Western Pro inces and

Oudh L st of ferred by re 62 6 7 9 82 Local Rules and Orders Ed to 1 -

(Part VI - Marriage of Native Christians Part VII - Penalties)

in his presence, and shall deposit in the office of the Registrar General of Births, Deaths and Marriages for the territories under the adminis tration of the said Local Government, in such form and at such intervals as that Government may prescribe, true and duly authenticated extracts from his register book of all entries made therein since the last of those intervals

- (2) Where the person keeping the register book was licensed as regards a Native State by the Governor General in Council, references in sub-section (1) to the Local Government therein mentioned shall be read as references to the Local Government to whose Registrar General of Births, Deaths and Marriages certified copies of entries in registers of births and deaths are for the time being required to be sent under section 24, sub section (2), of the Births, Deaths and Marriages Regis tration Act, 1886 1
- 63 Every person licensed under this Act to grant certificates of Searches m marriage, and keeping a marriage register book under section 62, shall, register at all reasonable times, allow search to be made in such book, and shall, copies of on payment of the proper fee, give a copy, certified under his hand, of an entry therein

64 The provisions of sections 62 and 63, as to the form of the Books m register book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall mutatis mutandis, apply Nativo to the books kept under section 37

marriages of Cirstinns under Part I or Part III are regra tere 1 to apply to Saving of certain

65. This Part of this Act except so much of sections 62 and 63 as Part VI not are referred to in section 64, shall not apply to marriages between Poma Roman Catholics But nothing herein contained shall invalidate any Catholics marriage celebrated between Roman Catholics under the provisions of Part V of Act No XXV of 1864.2 previous to the twenty third day of marriages. February 1865

PART VII

PENALTIES

366 Whoever for the purpose of procuring a marriage or license of marriage intentionally -

(a) where in onth or declaration is required by this Act, or certificate by any rule or custom of a Church according to the rites

False oath declaration. lag r arrange

^{10 11 4 3 1 111}

[·] rerealed by this let ian Chri tian Marriage Vol. 17

and ceremonies of which a marriage is intended to be solemnized, such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration.

(b) where a notice or certificate is required by this Act, signs a false notice or certificate.

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code with imprisonment of either ald description for a term which may extend to three years and, at the discretion of the Court, with fine

Forbidding, by false per sonation, faca to desure of cer tificate by Warringe Registrar be

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian XI Penal Code ¹

Solemnizing marriage without due authority 268. Whoever, not being authorized by section 5 of this Act to solemnize marriages, solemnizes or professes to solemnize in the absence of a Marriage Registrar of the district in which the ceremony takes place, a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years. and not exceeding ten years.

and shall also be liable to fine

Solemnizing marringe out of proper time, or without wit messes 69. Whoever knowingly and wilfully solemnizes a marriage between persons one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two crediile witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

^{&#}x27;General Acts, Vol I
'The section was substituted for the original s 68 by Act II of 1891, s 6, General
'tets Vol IV
'The words "and to amend the law relating to the removal of such convicts' were
repealed by the Repealing and Amending Act, 1891 (VII of 1891), General Acts, Vol IV

Christian Marriage (Part VII -Pe valtees)

This section does not apply to marriages solemnized under special Saving of becauses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the uniter special evening and six in the morning by a Clergyman of the Church of Rome. when he has received the general or special license in that behalf mentioned in section 10

'[Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites, ceremonies and customs of the Church of Scotland 1

70. Any Minister of Religion licensed to solemnize marriages un der this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents within four or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine

Solemnizing, without notice or teen days after notice. marriage with Dinor

> Issuing certificate or

marrying without pul-

lication of

after expire

solemnizing: Diarriace

with minor

of notice .

notice.

- 71. A Marriage Registrar under this Act, who commits any of the following offences -
 - (1) knowingly and wilfully issues any certificate for marriage. or solemnizes any r arriage, without publishing the notice of such marriage as directed by this Act,

2(2) after the expiration of two months after the copy of the marrying notice has been entered as required by section 40 in respect of any marriage, solemnizes such marriage,

(3) solemnizes, without any order of a competent Court author izing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he

himself be not the Senior Marriage Registrar (4) issues any certificate the issue of which has been prohibited as in this Act provided, by any person authorized to pro-

hibit the issue thereof shall be punished with imprisonment for a term which may extend

within four teen days without authority of Court or tandten sending copt of notice .

155ming certi f. ate against authorized Prohibition

to five years, and shall also be liable to fine.

[&]quot;This paragraph was added by a 7 of the Indian Christian Marriage Act (1072) Amendment Act 1891 (II of 1891) General Acts Vol. IV This clau e was so betituted for the original cl (*) by Act II of 1891 a 8 (1) and

(Part III -Penalties)

Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition.

72 Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of '[two months] after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this helalf.

shall be deemed to have committed an offence under section 166 of the Indian Penal Code 2

Persons
authorized
to solemnize
marringe
(other than
Clergy of
Churches of
England
Scotland

or Rome)

finite of

without pub

marrying

expiry of

194 tine certi

feate for or

marriage

notice or after 73 Whoever, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that

Inowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as afore-

Inowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there he more Marriage Registrars than one, to the Senior Marriage Registrar of the district

or knowingly and wilfully issues any certificate the issue of which his been forbidden, under this Act, by any person authorized to forbid the issue

ertificate authorizedly forbidden,

with minor, within fourteen days after notice issuing certificate

^{&#}x27;These words were substituted for the words "three months' by \$ 8 (*) of the Indian Christ an Marriago ict (1872) Amendment Act 1891 (II of 1891) General Acts Vol IV 'f eneral Acts Vol II

(Part III - Penalties Part VIII - Miscellaneous)

any person authorized to forbid the same,

or knowingly and wilfully solemnizes any marriage forbidden by solemnizing r arriage authorizedly forbidden.

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine

be licensed

74 Whoever, not being licensed to grant a certificate of marriage Unlicensed under Part VI of this Act, grants such certificate intending thereby to person grant ing certificate male it appear that he is so licensed, shall be punished with imprison pretending t ment for a term which may extend to five years, and shall also be liable to fine

Whoever, being licensed to grant certificates of marriage under Part VI of this Act without just cause refuses or wilfully neglects or omits to perform any of the duties imposed upon him by that Part shall be numished with fine which may extend to one hundred rupees ?

75 Whoever by himself or another wilfully destroys or injures Destroying any register book or the counterfoil certificates thereof, or any part or faintying thereof, or any authenticated extract therefrom.

books.

or falsely makes or counterfeits any part of such register book or counterful certificates

or wilfully inserts any false entry in any such register book or counterful certificate or authenticated extract.

shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine

76 The prosecution for every offence punishable under this Act Limitation of shall be commenced within two years after the offence is committed

prosecutions under Act

PART VIII

MISCELLANEOUS

77 Whenever any marringe has been solemnized in accordance with the provisions of sections 4 and 5 it shall not be void merely on ac count of any arregularity in respect of any of the following matters, namely -

What matters need not be proved in respect of n arringe in accordance with Act.

- (1) any statement made in regard to the dwelling of the persons married or to the consent of any person whose consent to such marriage is required by law
- (2) the notice of the marriage

This paragraph as added by a 9 of the Ind an Christian Marriage Act (1277)

Amendment Act 1891 (II of 1891) General Acts Vol. IV

(Part VIII -Mescellaneous)

- (3) the certificate or translation thereof
- (4) the time and place at which the marriage has been solemnized
 - (5) the registration of the marriage

Correction of

78. Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may, within one month next after the discovery of such error, in the
presence of the persons married or, in case of their death or absence,
in the presence of two other credible witnesses, correct the error, by
entry in the margin, without any alteration of the original entry, and
shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof

And every entry made under this section shall be attested by the witnesses in whose presence it was made

And in case such certificate has been already sent to the '[Registrar-General of Births, Deaths and Marriages], such person shall make and send in like minner a separate certificate of the original erroneous entry, and of the marginal correction therein made

Searches and copies of en tries. 79 Every person solemnizing a marriage under this Act, and hereby required to register the same, and every Marriage Registrar or '[Registrar General of Births,

and every Marriage Registrar of "Registrar General of Dirting, Deaths and Marriages] having the custody for the time being of any register of marriages, or of any certificate, or duplicate or copies of certificate, under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate, or duplicate, or copies, and give a copy under his hand of any entry in the same

Certifed copy of entry in marri ge ro gister etc to be evidence

80 Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage register or certificate, or duplicate, required to be kept or delivered under this Act, of an entry of a marriage in such register, or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate or duplicate, or of any entry therein, respectively, or of such copy

Sending cer tificates of certain marriages to 81. The '[Registrar General of Births, Deaths and Marriages] and the officers appointed under section 56 shall, at the end of every quarter in each very, select, from the certificates of marriages forwarded to

[&]quot;Tlees words were substituted for the words Secretary to the Jocal Covernment" and Secretary to a Local Governmen 'r respectively by a 30 (t) of the Births Deaths and Marriages Regularation Act, 1256 (VI of 1250) General 'cts' to! III

(Part VIII - Mescellaneous)

them respectively during such quarter, the certificates of the marriages Secretary of of which the Governor General in Council may desire that evidence State for India. shall be transmitted to England,

and shall send the same certificates signed by them respectively, to the Secretary to the Government of India in the Home Department, for the purpose of being forwarded to the Secretary of State for India and delivered to the Registrar General of Births, Deaths and Marriages "[in England]

Provided that in the case of the Governments of Madras and Bom bay, the said certificates shall be forwarded by such Governments re spectively directly to the Secretary of State for India

82 Fees shall be chargeable under this Act forreceiving and publishing notices of marriages issuing 2 certificates for marriage by Marriage Registrars and registering marriages by the same,

Local Gov ernment to prescribe fees

entering protests against or prohibitions of the issue of a certi ficates for marriage | by the said Registrars.

searching register books or certificates, or duplicates of copies thereof.

giving copies of entries in the same under sections 63 and 79

The Local Government shall fix the amount of such fees re spectively.

and may from time to time vary or remit them either generally or in special cases, as to it may seem fit

¹These words were added by s 30 (d) of the B rths Deaths and Marriages Registra tion Act 1886 (VI of 1886) General Acts Vol III

The words certificates for marriage were substituted for the words certificate of marriages by the Repealing and Amending Act 1963 (I of 1963) s 3 and Sch II General Acts Vol V

These words were substituted for the words marriage certificates by the Repealing and Amending Act 1903 (I of 1903) s 3 and Sch. II General Acts Vol V

^{*} For notifications fixing the amount of such fees in-

the

(Part FIII - Miscellaneous)

Power to make rules.

83. The Local Government may make rules 1 in regard to the disposal of the fees mentioned in section 82, the supply of register books, and the preparation and submission of returns of marriages solemnized under this Act

Power to prescribe fees and rules for Native States

- Power to declare who shall be District Judge
- Powers to delegato function under this Act of Governor General in Council
- 84. The powers conferred on the Local Government by sections 82 and 83 may, so far as regards Native States, be exercised by the Governor General in Council 2
- 85. The Local Government may, by notification in the official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge
- 86. The powers and functions given by this Act to the Governor General in Council may be delegated to and exercised by such officers as the Governor General in Council from time to time appoints in this behalf

```
1 For rules under a 83 for-
       (2) Baluchistan, see Bal Code,
(3) Bengal, see Ben R & O,
        (4) Burma see Bur R M
                                                             Travancore, Cochin Puddu
                                                             George Gazette, 1905, Pt I,
                                                                             il Rules and
                                                                             itive States,
                                                                             · St George
                                                                              Baluchistan
                                                                             id (N I),
                                                                             tates situate
                                                                               82 and 83,
India for States under that Age
                                                                                    1 for
                                                                                    eral
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(Part IIII - Mescellaneous)

And all such powers and functions may be exercised, as regards Native States '[situate within or bordering on] the Presidencies of Fort Saint George 2 and Bombay, by the Governors in Council of those Presidencies respectively

87. Nothing in this Act applies to any marriage performed by any Swing of Minister, Consul or Consular Agent between subjects of the State which marriages he represents and according to the laws of such State

88 Nothing in this Act shall be deemed to validate any marriage Non valida which the personal law applicable to either of the parties forbids him tion of n ar ringer within or her to enter into

probabated degrees

These words were substituted for the words situate within the local limits of 91 of the Indian Christian Marriage Act (1872) Amendment Act 1891 (If of 1891) General Acts Vol IV and are to be read as if enacted when Act \ 2 As to notification by Government of Madras see notes under as 82 83 84

(Schedule I - Notice of Marriage)

SCHEDULE I

(See sections 12 and 38)

NOTICE OF MARRIAGE

To a Minister [or Registrar] of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof between me and the other party herein named and described (that is to say)

Names	Condi tion	Rank or profe s on	Age	Dwel ing pace	Length of re dence	Chu ch, c apel or pace of we sh p n wh ch the marriage is to be solem nized	D st ict n which the othe tarty res des when the pa tex dwell in different dist cts
James Smith	Widower	Carpenter	Of full age	16 Clive Street	23 days	Church Calcutta	
Martha Green	Spinster		Minor	20 Hastings St ect	Moro Van a month	Tree Churcl of Scotland Church	

Witness my hand, this

day of

seventy two

(Signed) JAMES SMITH

[The states in this schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district]

(Schedule II - Certificate of Receipt of Notice.)

SCHEDULE II.

(See sections 24 and 50')

CERTIFICATE OF RECEIPT OF NOTICE

do hereby certify that, on the day of , notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of one of the parties (that is to say) —

Yawes	Coudi tion	Rank or profes	Age	Dwe l iog place	Leng h of resi dence	Church chapel or puce of worship a which the start age is to be selembased	D strict in which the other party resides when the parties dwell in different d stricts
James Smith	W. lower	Carpenter	Of Jull age	16, Clive Stocet	23 days	Free Church of Scaland Church Colcutta	
Martha Green	Spinster		Minor	20 Hastings Street	More Uan a	Free Church of	

and that the declaration, ¹[or oath] required by section 17 or 41 of the Indian Christian Marriage Act, 1872, has been duly made by the \$Voft872\$. said \$James Smith\$)

Date of notice entered

Date of certificate given (Witness my hand, this

The issue of this certificate has not been prohibited by any person author ized to forbid the issue thereof

day of seventy two (Signed)

This certificate will be void, unless the marriage is solemnized on or before the day of

[The states in the schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

These words were added by the Repealing and Amending Act, 1903 (I of 1903), a 3, General Acts, Vol V

(Schedule 111.-Form of Register of Marriages)

SCHEDULE III.

(See sections 28 and 31.1)
FORM OF REGISTER OF MARRIAGES.

Quarterly Returns

of MARRIAGES

The Archdeaconry of { Calcutta | Madras | Bombay

I,———, Registrar of the Archdeaconry of $\begin{cases} Calcutta, \\ Madras, \\ Bombay, \end{cases}$

do hereby certify that the annexed are correct copies of the originals and Official Quarterly Returns of Marriage within the Archdeaconry

of $\begin{cases} Caloutta, \\ Madras, \\ Bombay, \end{cases}$ as made and transmitted to me for the quarter commencing the day of ending the

day of in the year of Our Lord

[Signature of Registrar.]

Registrar of the Archdeaconry of Madras, Bombau.

MARRIAGES solemnized at Allahabad,
Barrackpore,
Bareilly,
Calcutto

WEE	413	MIED.	Nam Pat	# 0 P			Protes	at 1he	Pur sur	=	å	Theatra	the the
Year	Month	Pay	Chri tian	Surtame	η.	t ondition	Itank elos	time of m	Path er and	By banne ce ne	t fgnatures parties	Bignatures or more w	S gnature pr son so ing the ma
]													

^{&#}x27;This reference was substituted for the original reference by Act AII of 1891, Second Schedule, General Acts, Vol. IV.

SCHEDULE IV.

Marriage Registry Book (See sections 32 and 54)

				O SERVE	NAMES OF PARTIES	_					,
Number	ž	Vate Messer	e	Christian name	Sara me	Age -	Condition	Rank or profes	Residence at 11 e time of marr age.	Father's name and	
	-	1.	1								
	100	Month	Year								, II. 10 I
	•	_									
											_,,,
'	Ī		_								,
_				James .	White	26 years .	H 1douer	H 1douer Carpenter	Agra	. William White.	2200
_		_		Martha	Duncan	II years	Spinster			John Duncan	••,

(James II hete,

Marned in the

Sohn Smith | in the presence of us This marringe was solumnized between us

CERTIFICATE OF MARRIAGE

			(Schedule IV -C	Certificate of	Marriage)
		Fa her a name and surname		William White	John Duncan
		Residence at the time of marnage		Agra	Agra
		Rank or profes lon		Carpenter	
		Condition		Widowe	Spinster
		ν Žγ		26 year s	IT years
	Part for	4 arra o		Philo	Duaran
	VARES OF PART ES	Christian name		James	Martla
Ì		2	Year	Ţ	
		WHEN MARE RO	Day Month Year	 	
		<u>.</u>	Dy		
	1	Kanbr			ļ

In the presence of us Martha Duncan, This marriage was solemnized between us

Married in the

(Schedule V -Enactments repealed)

SCHEDULE V.

(See section 2) ENACTMENTS REPEALED

Number and year	Title	Extent of Repeal
Statute 58 Geo 3 cap 84	An Act to remove Doubts as to the Valuaty of certain marriages had and solemnized within the British territories in India	The whole
Statute 14 & 15 Viet cap 40	An Act for Marriages 11 India	The wi ole
Act No V of '852	An Act for giving effect to the provisions of an Act of Parlament, jassed in the 15th year of the regn of Her present Majesty, in tailed 'An Act for Mar rieges in India.	So mu h as has not been repealed
Act No V of 1865	The Indian Marriage Act, 1865	The whole Act ex- cept so far as it relates to the Straits Settlements
Act No XXII of 1866	An Act to extend the Indian Marriage Act 1865 to the Hyderabud Ass good Districts and the Cantonweats of Secunderabad, Timulgerry and Aurung abad	The whole

ACT No XVIII or 1872 1

[29th August 1872]

An Act to amend the Indian Evidence Act, 1872

Preamble

of section 57

Whereas it is expedient to amend the Indian Evidence Act, 1872,2 I of

It is hereby enacted as follows -Short title

1. This Act may be called the Indian Evidence Act Amendment Act

[Commencement] Rep by the Repealing Act, 1874 (XVI of 1874) Amendment 2. In section 32 of the Indian Evidence Act, 1872,2 clauses (5) and I of of Act I of

(6), after the word "relationship," the words "by blood, marriage or 1872, section 32, clauses (5) adoption" shall be inserted and (6) Amendment

3. In section 41 of the same Act, lines 17, 20 and 23, after the word "judgment," the words "order or decree" shall be inserted

of section 41 Amendment 4. In section 45 of the same Act, line 5, after the word "art," the

of section 45 words "or in questions as to identity of handwriting" shall be inserted Amendment

5. In section 57 of the same Act, paragraph (13), after the word "road," the words "on land or at sea" shall be inserted

Amendment 6 In section 66 of the same Act, line 5, after the word "is," the of section 66 words "or to his attorney or pleader" shall be inserted

Amendment 7. In section 91 of the same Act, exception 2, for the words "under of section 91 the Indian Succession Act," the words "admitted to probate in British

India." shall be substituted 8. [Amendment of section 92] Rep by the Repealing Act, 1876

(XII of 1876) Amendment 9 In section 108 of the same Act, line 1, for the word "When," of section 108

the words "Provided that when" shall be substituted, and, in the 1 1 1 1070 Dr V n 631

for

in the banthal Pargamas by the banthal I digamas betterment negmation (III or s Act,

Lonardaga and Mallonum and Pargana Dhalbhum and the Kolhán in the District of Singbhum (The District of Lohárdaga, now called the

Ranchi District see Calcutta Gazette, 1899 Pt I p 44, tnen included the Palamau District separated in 1834) See Gazette of India, 1831, Pt. I, p. 504 The North Western Provinces

Tarás Ditto 1876 Pt I. p 505

As to application of this Act, as being part of Act I of 1872, to other places, see the second footnote on p 2.0 supra Printed, supra, p 200

1872 . Act XIX.7

Penal Code Amendment.

last line, for the word "on," the words "shifted to" shall be substituted

10. In section 126 of the same Act, lime 22, and in section 128 of Amendment the same Act, line 6, after the word "barrister," the word "pleader" of sections. shall be inserted. 126 and 128

In section 126 of the same Act, line 15, for the word "criminal," the word "illegal" shall be substituted

11. In section 155 of the same Act, paragraph (2), for the word Amendment had," the word "accepted" shall be substituted

12. [Saving of Act XV of 1852, section 12] Rep by the Indian Oaths Act. 1873 (X of 1873)

ACT No XIX of 1872 1

[29th August 1872]

An Act to amend the definition of "Coin" contained in the Indian Penal Code

Whereas it is expedient to amend the definition of 'coin" con Premise

WHERE'S it is expedient to amend the definition of 'Com' con Prevable o, tained in the Indian Penal Code,' section 230, It is hereby enacted as follows —

1. For the first paragraph of the said section, the following shall Amendment be substituted — of Act ALV

Short title The Indian Penal Code Amendment Act 1872 See the Indian Short

't V p 612

J of 1850 see f 1893), Bur

Code, the Arakan Hill District see the Arakan Hill District Laws Regulation, 1874 (IV of 1874) s 3 total and

in the Sinthal Pargamas by the Santhal Pargamas Settlement Regulation (III of 1872) as amended by the Santhal Pargamas Justice and Laws Pegulation 1899 (III of 1899), Ben Code

It has been declared by notification under s 3 (a) of the Scheduled Districts, Act, 1874 (VIV of 1874) printed infra to be in force in the following Scheduled Districts,

namely.

The Districts of Haráribagh, Lohárdaga and Manbhum and Pargana Dhálbhum and the holhán in the District of Singhbum (The District of Lohárdaga, now called the Ranch District ete Calculta Gastetie 1939 Pt I p 44 then included the Palamau District, separated in 1834) See Gazette of India, 1831 Pt. I, p 503

THE GOVERNMENT SAVINGS BANKS ACT, 1873.

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13. Payment of married women's deposits.

Rules.

 Rules regulating certificates under section 8, and payments under section 10, 12 or 13.

Deposits belonging to the Estates of deceased Pirsons) (Preliminary

ACT No. V of 1873.1

[28th January 1873.]

An Act to amend the Law relating to Government Savings Banks.

WHEREAS it is expedient to amend the law relating to the payment Preamble of deposits in Government Savings Banks, It is hereby enacted as follows -

Preliminary

1. This Act may be called the Government Savings Banks Act, 1873 It extends to the whole of British India

Short title Local extent

- [Commencement] Rep by the Repealing Act, 1874 (XVI of 1874). 2. [Repeal of Act XXVI of 1855] Rep by the Repcaling Act, 1873 (XII of 1873)
 - 3. In this Act-

Interpretation clause

"depositor" means a person by whom, or on whose behalf, money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank, and "deposit" means money so deposited

"Secretary" includes every person empowered to manage a Government Savings Bank, and

"minor" means a person who has not completed the age of eighteen years 2

Deposits belonging to the Estates of deceased Persons

4. If a depositor dies, leaving in a Government Savings Bank a sum Payment on of money not exceeding one thousand rupees,

death of de police

and if probate of his will or letters of administration of his estate. or a certificate granted under Act No XXVII of 1860 (for facilitating the collection of debts on successions, and for the security of parties

^{*} For the Statement of Objects and Revons to the Bill which was bried upon the Trustes Savings Banks Act 1855 (25 & 27 vict c 57) * 30 see Gazette of India 1972 Pt V. p 575, or Trusten Savings Banks Act 1855 (25 and 25 Supplement pp 1727, 43) this. p 1873, Supplement pp 150 and 221 Act V of 1873 has been declared in force in the Santhall Paraganas by the Fart 1 and 25 the Saving 1875 (25 and 25 and

ended by the Santhal Paryater ode and in the Arabar 1;
(I) of 1874) a 3 Bur (I)
the Schedule I I) ren a fr following Schol led there

It has been declared to be in force in Upper Burma generally for account States) by the Burma Laws Act 1898 (VIII of 1893) a 4 (1) and Ech 1 Locales Cf The Indian Majority Act, 1875 (IX of 1875), infra

x

(Deposits belonging to the Estates of deceased Persons)

paying debts to the representatives of deceased persons), 1 is not produced to the Secretary of such Bank within three months of the death of the said depositor.

the Secretary of such Bank may pay the said sum of money to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased

Payment to he a dis charge Saving of right of exe cutor

5 Such payment shall be a full discharge from all further liability in respect of the money so paid

But nothing herein contained precludes any executor or administra tor, or other representative of the deceased, from recovering from the person receiving the same the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or dis

Saving of

ditor

charged by him in due course of administration And any creditor or claimant against the estate of the deceased may right of crerecover his debt or claim out of the money paid under this Act or * *2 Act No XXVI of 1855, to any person, and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the

Security for d to adminise tration

deceased

6 The Secretary of any such Bank may take such security as he thinks necessary from any person to whom he pays any money under section 4 for the due administration of the money so paid.

and he may assign the said security to any person interested in such administration

Power to a in inister oath

7 For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid the Secretary of any such Bank may take evidence on oath or affirmation according to the law for the time being

Penalte for false state ments.

relating to oaths and affirmations 4 Any person who upon such oath or affirmation, makes any state ment which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of an offence under

Deposit when

excluded in computing

court-fees.

section 193 of the Indian Penal Code 5 XI 8 Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed one thousand rupees, such amount shall be excluded in computing the fee chargeable, under the Court fees

See now the Succession Certificate Act 1889 (VII of 1889), a 2 General Acts Vol The words the said were repealed by the Repealing and Amending Act 1891 (VII

Act NAVI of 1855 was repealed by a 2 of this Act Caneral Acts Vol I

(Deposits belonging to the Estates of deceased Persons Deposits belonging to Menors Deposits belonging to Lauratics

Act, 1870,1 on the probate, or letters of administration, or certificate (if any), granted in respect of his property 2

Provided that the person claiming such probate or letters or certifi cate shall exhibit to the Court authorized to grant the same a certifi cate of the amount of the deposit in any Government Savings Bank be longing to the estate of the deceased. Such certificate shall be signed by the Secretary of such Bank, and the Court shall receive it as evidence of the said amount

9 Nothing hereinbefore contained applies to money belonging to Atnot to the estate of any European officer, non commissioned officer or soldier dving in Her Majesty's service in India, or of any European who, at the lig to estates time of his death, was a deserter from the said service

app y to de posits belong of Luropean soldiers or deserters

Deposits belonging to Minors

10 Any deposit made by, or on behalf of, any minor may be paid to Payment of him personally if he made the deposit, or to his guardian for his use if minor or the deposit was made by any person other than the minor, together with guardian the interest accrued thereon

The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge therefor

II All payments of deposits heretofore made to minors or their Legalization guardians by any Secretary of a Government Savings Bank shall be ments ferto deemed to have been made in accordance with law

fore made

Deposits belonging to Lunatics

12 If any depositor becomes insone or otherwise incopuble of Payment of managing his affairs

belonging to

and if such instruity or incapacity is proved to the satisfaction of the lunation Secretary of the Bank in which his deposit may be, such Secretary may, from time to time make payments out of the

deposit to any proper person

and the receipt of such person for money paid under this section, shall be a sufficient discharge therefor

Where a committee or manager of the depositor's estate has been duly appointed, nothing in this section authorizes payments to any person other than such committee or manager

^{*}Cf the Savines Bank Act 1828 (9 Geo IV e 9") s 40 now repealed by the Savines Publs Act 1863 (26 & 27 Vict., e 87)

(Deposits made by Married Women. Rules.)

shall be a sufficient discharge therefor.

Oathe

Γ1873 : Act X.

Payment of married women's de-

posits.

Rules regu

lating certi

section 8. and pay

ments

ficates under

10, 12 or 13

Deposits made by Married Women. 13. Any deposit made by or on behalf of a married woman, or by or on behalf of a woman who afterwards marries, may be paid to her, whether or not the Indian Succession Act. 1865.1 section 4, applies to her marriage; and her receipt for money paid to her under this section

Rules.

14. All certificates under section 8, and all payments under section 10, section 12 or section 13, shall be respectively granted and made by the Secretary of the Bank, subject to such rules consistent with this Act as the Governor General in Council may, from time to time, prescribe.2 under section

THE INDIAN OATHS ACT, 1873.

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3 Saving of certain oaths and affirmations

II - 1uthority to administer Oaths and Affirmations

4 Authority to administer oaths and affirmations.

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6 Affirmation by Natives or by persons objecting to oaths

IV .- Forms of Oaths and Affirmation.

7 Forms of caths and affirmations.

8 Power of Courts to tender certain caths.

9 Court may ask party or witness whether he will make oath proposed by opposite party.

General Acts, Vol I * For such rules, see Gazette of India, 1833, Supplement, p 695, and shid, 1892, Pt 1, D 207.

SECTIONS.

- Administration of oath if accepted.
- 11. Evidence conclusive as against person offering to be bound.
- 12. Procedure in case of refusal to make oath.

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- 13. Proceedings and evidence not invalidated by omission of oath or irregularity
- 14. Persons giving evidence bound to state the truth. 15. Amendment of Penal Code, sections 178 and 181.
- 16. Official eaths abolished.

SCHEDULE - [Repealed.]

ACT No. 3, or 1873 1

18th April 1873.7

An Act to consolidate the law relating to Judicial Oaths, and for other purposes.

WHEREAS it is expedient to consolidate the law relating to indicial Preamble,

17 - 41 Ct + -- + 4 Ol + -- 3 D -- ++- Can ++- of Tad a 1972 D+ V, p 17, pplement,

Act. the her Acts, for observance by Cause Court at Madras, see

Act A of forg has been declated in force inthe Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), s 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III

of 1899), Ben Code, the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (IX of

1874), a 5, Bur Code,
1874), a 5, Bur Code,
Upper Burma cenerally (except the Shan States) by the Burma Laws Act, 1893
(AIII of 1893), a 4 (1) and Sch I Bur Code,
British Balachistan by the British Baluchistan Laws Regulation, 1890 (I of 1890),

s J. Bal Code, Angul District (with an exception) by the Angul District Regulation, 1894 (I of

1894), s 3, Ben Code It has further been declared by notification under s 3 (a) of the Scheduled Districts

Act, 1874 (XIV of 1874), printed infra, to be in force in the following Scheduled Districts, namely

The Districts of Hazaribigh Lohardaga and Manbhum and Parguna Dhalbhum and the Kolhan in the District of Singbhum (The District of Lohardaga then included the Palaman District separated in 1894 Lohardaga is now called the Ranchi District, see Calcutta Gazette 1899 Pt I p 44)

See Gazette of India 1831, Pt I, p 504

The North Western Provinces Ditto 1876 Pt I, p 505 The Scheduled Detricts in Ganyum and Vinacopatam are Fort St. George Gazette, 1838 Pt. I. p. 666 and Gazette of India 1830 Pt. I. p. 861.

It has been extended by notification under a 5 of the same Act, to the Scheduled Datrict of Coorg. See Gazette of India 1876 Pt. I. p. 41.

TOL. II. 2с (I -Preliminary II - Authority to administer Oatl's and Affirmations III - Persons by whom Oatls or Affirmations must be made)

oaths, affirmations and declarations, and to repeal the law relating to official oaths, affirmations and declarations, It is hereby enacted as follows -

I -Preliminary

Short title Local extent. 1 This Act may be called the Indian Oaths Act, 1873 It extends to the whole of British India, and, so far as regards sub

jects of Her Majesty, to the territories of Native princes and States in alliance with Her Majesty

[Commencement] Rep by the Repealing Act, 1876 (XII of 1876) 2 [Repeal of enactments] Rep by the Repealing Act, 1873 (XII of 1873) 3 Nothing herein contained applies to proceedings before Courts Martial, or to caths, affirmations or declarations prescribed by any law

Saving of certain oaths and afternatlone

which, under the provisions of the Indian Councils Act, 1861,2 the 24 8 Governor General in Council has not power to repeal II -Authority to administer Oaths and Affirmations

An thority to administer oaths and affirmations.

Oaths or

affirmations. to be made

4 The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law -

- (a) all Courts and persons having by law or consent of parties authority to receive evidence,
- (b) the Commanding Officer of any military station occupied by troops in the service of Her Majesty

. Provided-

- (1) that the oath or affirmation be administered within the limits of the station, and,
- (2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India

III -Persons by whom Oaths or Affirmations must be made

5 Oaths or affirmations shall be made by the following persons

(a) all witnesses, that is to say, all persons who may lawfully examined, or give, or be required to give, evidence b

witnesses s oath 'See the Ind an Articles of War (Act V of 1869) supra the Ind an Volunter' 1869 (AN of 1869) supra and the Indian Marine Act 1887 (AIV of 1887) General Vol. IV.

'Coll Stat., Vol. I

(III - Persons by whom Oaths or Affirmations must be made VI - Forms of Oaths and Affirmations)

> before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence.

(b) interpreters of questions put to, and evidence given by, wit-interpreters nesses, and

(c) surors

furors.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or . affirmation that he will faithfully discharge those duties

6 Where the witness, interpreter or juror is a Hindu or Muham- Amenation

madan. or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation

In every other case the witness, interpreter or juror shall make an _ath

IV -Forms of Oaths and Affirmations

7. All oaths and affirmations made under section 5 shall be administ Forms of tered according to such forms as the High Court may from time to time oaths and prescribe 1

by Natives

or by persons

objecting to

oaths.

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now 7TI 1150

8 If any party to, or witness in, any judicial proceeding offers to Power of give evidence on oath or solemn affirmation in any form common tender certain amongst, or held binding by, persons of the race or persuasion to which oaths. he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstand ing anything hereinbefore contained, tender such oath or affirmation to hım

9 If any party to any judicial proceeding offers to be bound by any Court may such oath or solemn affirmation as is mentioned in section 8, if such oath witness or affirmation is made by the other party to, or by any witness in, such whether he

For forms prescribed in-Bombay see Bom R & O Burma see Burma Laws List Ed 1897 p 47
see Mad P & O
see N W P and Oudh List of Local Rules Madras United Provinces

TI Contra) Provinces and Orders Ed 1894 p 42 see C P R & 0 pth explanation to section 7 was repealed by the Lower Burma Courts Act 1900 (VI Duttre) b 43 and Sch II

OL II

(IV - Forms of Oaths and Affirmations. I' - Mescellaneous)

will make proceeding, the Court may, if it thinks fit, ask such party or witness, or oath proposed cause him to be asked, whether or not he will make the oath or affirmaby opposite party

Administra tion of oath

of accepted

Fyldence conclusive as

against per son offering to be bound.

Procedure in case of

refusal to

make oath.

Proceedings

and evidence not invalid

zion of oath or irregular

Persons

bound to state the truth

Corle, sec tions 179 and ISI

Off cust

ortis abolished.

Amendment of I enal

giring eridence

ity

Provided that no party or witness shall be compelled to attend per-

sonally in Court solely for the purpose of answering such question

10. If such party or witness agrees to make such oath or affirmation. the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the

evidence of the person to be sworn or affirmed and return it to the Court 11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it. but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which

he may assign for his refusal V - Muscellaneous

- 13. No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invaliated by omis date any proceeding or render madmissible any evidence whatever, in or in respect of which such oppission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth
 - 14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject 1
 - 15. The Indian Penal Code, sections 178 and 181, shall be construed XLV as if, after the word "onth," the words "or affirmation" were inserted
 - 16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirma tion or declaration whatever

SCHLDULF [Rep by the Repealing Act, 1873 (All of 1873)] * Cf Act XLX of 1900 # 191 (eneral Acts Vel I

THE ADMINISTRATOR GENERAL'S ACT, 1874.

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- Time within which application to revoke must be made
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- 20 Letters to be granted to Administrator General by his name of
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 - 35 Creditors' suits against Administrator General
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 - 36 In what case Administrator General may grant certificate
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 - 39 Copy of certificate with receipt annexed, when signed by certificate holder, to be a discharge Right of executor or administrator against certificate holder

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40 Administrator General not bound to take out administration on

- 40 Administrator General not bound to take out administration account of effects for which he has granted certificate
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68 Division of the Presidency of Bengal into Provinces

ACT No II or 1874 1

[10th February 1874]

An Act to consolidate and amend the law relating to the office and duties of Administrator General

WHEREAS It is expedient to consolidate and amend the law relating Presm

(Part I -- Preliminary)

to the office and duties of Administrator General, It is hereby enacted as follows -

PART I

PRELIMINARY

Short title

1 This Act may be called the Administrator General's Act, 1874

It extends to the whole of British India and, so far as regards British subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

Commence ment. Repeal of Acts. And it shall come into force at once

2 Act No XXIV of 1867 (to consolidate and amend the law relating to the office and duties of Administrator General) and Act No XIX of 1869 (to facilitate administration to the estates of deceased British subjects in the Hyderabad Assigned Districts) and Act No V of 1870 (so far as it relates to the Administrator General) are hereby repealed

All things duly done under any of the enactments hereby repealed shall be considered as having been done under this Act

3 In this Act, unless there be something repugnant in the subject

Interpretation-clause "Presidency of Bengal"

or context,—

"Presidency of Bengal" includes—

(a) the territories for the time being respectively under the
governments of the Lieutenant Governors of Bengal, the

North-Western Provinces and the Punjab,

(b) the territories for the time being respectively under the administrations of the Chief Commissioners of Oudh, the Central Provinces, Burm' Ajmere and Merwara Assam and the Andama and Nicobar Islands,

The Act has been declared under s 3 (a) of the Scieduled D stricts Act 1874 (NIV of 1874) printed infra to be in force in the following S hed led Districts namely—

i i

p 44

Purms generally (except the Shan s 4 (1) and Shi Bur Code s 4 and Schelule to the Shan States a 6 arette 1205 Pt 1 p 22 anto I coveres see s 68 anto

(Part I -Preliminary)

(c) such of the dominions of Princes and States aforesaid as the Governor General in Council may, by notification in the Gazette of India, from time to time direct 1

Presidency

"Presidency of Madras" includes-

(a) the territories for the time being under the government of of Madras' the Governor of Fort St George in Council.

- (b) such of the dominions aforesaid as the Governor General in Council may, by notification in the Gazette of India, from time to time direct.1
- (c) Coorg.
- (d) Mysore

"Presidency of Bombay" means-

(a) the territories for the time being under the government of the of Bombay "

Presidency

Governor of Bombay in Council fand under the administration of the Chief Commissioner of British Baluchıstan J (b) such of the dominions aforesaid as the Governor General in

Council may, by notification in the Gazette of India, from time to time direct 1

(c) the Hyderabad Assigned Districts

"Presidency town" means the town of Calcutta, Madras or Bombay. Presidency. as the case may be

"Government" means the Governor General in Council, so far as 4 Govern the Act relates to the Presidency of Bengal, the person for the time being administering the executive government of the Presidency of Fort St George, so far as the Act relates to the Presidency of Madras: and the person for the time being administering the executive government of the Presidency of Bombay, so far as the Act relates to the Presidency of Bombay

"letters of administration" shall include any letters of adminis 'Letters of tration, whether general or limited, or with a will annexed, and letters sammistraad calligenda bong

"next of hin" includes a widower or widow of a deceased person, or any other person who, by law and according to the practice of the Courts would be entitled to letters of administration in preference to a creditor or legatee of the deceased

"officer means a commissioned officer of Her Majesty's Army, or of Her Majesty's Indian Army

Officer "

For I st of States notified under these clauses see Gazette of India 1878 Pt I p 438 and ibid 1890 Pt I p 237

These words in a 5 were added by the Ind an Succession Law Amendment Act 1890
(II of 1890) a 10 General Acts Vol IV

(Part II -Of the Office of Advanistrator General)

"Soldier "

"soldier" means a soldier of Her Majesty's Army, or European soldier of Her Majesty's Indian Army, including a warrant and a noncommissioned officer

"assets" includes immoverble as well as moverble property

PART II

OF THE OFFICE OF ADMINISTRATOR GENERAL

Designation of the Ad ministrators Ceneral in the three Presidencies

4 In each of the Presidencies of Bengal, Madras and Bombay, there shall be an Administrator General 1 The said Administrators General shall be called respectively the

Administrator General of Bengal, the Administrator General of Madras, and the Administrator General of Bombay

Appoint ment auspension an I ren oval of Administra tors Ceneral

5 Such officers shall be appointed and may be suspended or removed by the authorities hereinafter mentioned, respectively, that is to say the Administrator General of Bengal, by the Governor General in

Connerl the Administrator General of Madras, by the Government of Fort

St George, and the Administrator General of Bombay, by the Government of

Onalification of future and conta nuance of ex isting incum benta

Adn ınletra

Bombar 6. Any person hereafter appointed to the office of Administrator

General or officiating Administrator General of any of the said Presi dencies shall be a member of the Bar of Fugland or Ireland, or of the Faculty of Advocates in Scotland, but any person now holding such office shall continue to hold the same, subject to the provisions contained in the other sections of this Act

7. The Administrator General shall not be deemed in that capacity to be an officer of any High Court

tor Ceneral not an off cer of High Cana Probates etc granted by Supreme Co rti to Fe clesustical Regi trara to have same effect as if granted to A lministra tor Ceneral No Umin Istrator Gen

rral to be fe

8 All probates and letters of administration granted by any of the late Supreme Courts of Judicature to the Ecclesiastical Registrar of such Court in virtue of his office shall have the same effect in all respects us to any act hereafter to be done or required to be done under this Act, as if they had been granted to the Administrator General

9 No person non holding the office of Administrator General, or bereafter to be appointed to such office in any of the said Presidencies,

^{*}For pewer to divide the Presidence of Bengal into provinces and to appoint an Admi strator Ceneral for each province see a 68, enfra

(Part II -Of the Office of Advanestrator General)

shall hold the office of Ecclesiastical Registrar nor without the express sanction of Government, any other office together with that of Administrator General

clesiastical Registrar

Provided that the Administrator General of the Presidency may be Administra appointed Official Trustee under Act No AVII of 1864 1 (to constitute not to hold an office of Official Trustee)

tor Ceneral any other off ce with out sanction of Govern

10 It is hereby declared to be an offence punishable in manner Penalty for provided by section 168 of the Indian Penal Code 3 for any Adminis trator General to trade or traffic for his own benefit, or for the benefit of any other person unless so far as appears to him to be expedient for the Exception due management of the estates which come into his charge under the provisions of this Act and for the sole benefit of the several persons entitled to the proceeds of such estates respectively, but this exception is not to be construed to alter the civil liabilities of the Administrator General as trustee of such estates

11 Unless the Governor General in Council, or the Government, Security to with the sanction of the Governor General in Council, otherwise orders, Administra every Administrator General hereafter to be appointed shall give tor General security to the Secretary of State for India, for the due execution of his office, for one lakh of rupees by his own bond, and for another lakh of rupees, or for separate sums amounting together to one lakh of rupees. by the deposit of Government securities, or by the joint and several bond or bonds of two or more sureties to be approved by Government,

or partly by such deposit and partly by such bond or bonds Provided that every Administrator General may, with the consent S betit it on of Government, substitute either of the said two last mentioned kinds of security or

of security for another previously given for such last mentioned lakh or any part of it

and every Administrator General may, with the consent of Govern ment and shall from time to time when required by Government so to do, cause fresh sureties to be substituted for any of those previously bound, so far as the security relates to the due execution of his office for the time then to come

12 No Administrator General shall be required by any Court to \osecurity enter into any administration bond, or to give other security to the berequired

^{&#}x27;General Acts Vol I

ow . was 1.3 h the Administrators General and Official Tru-tees al Acts Vol V The proviso was as follows General of Bengal may hold the office of Pecerver me Ili W

(Part II - Of the Office of Administrator General Part III - Of the Rights, Powers and Duties of the Administrator General)

from Admin Istrator General Court, on the grant of any letters of administration to him in virtue of his office

No Administrator General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and, if the facts stated in any such petition are not within the Administrator General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification

Whoever makes a statement in any such petition which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Appointment of officiating Administra tor General 13 Whenever any person holding the office of Administrator General obtains leave of absence, the Government may appoint some person to officiate as Administrator General, and such person, while so officiating, shall be subject to the same conditions and be bound by the same responsibilities as the Administrator General by any law for the time being in force, and he shall be deemed to be Administrator General for the time being under this Act, and shall be liable to give security under section 11 in like manner as if he had been appointed Administrator General

PART III.

OF THE RIGHTS, POWERS AND DUTIES OF THE ADMINISTRATOR GENERAL

- (a) Grants of Letters of Administration and Probate to the Administrator General
- 14. So far as regards the Administrator General of any of the Presidences of Bengal, Madras and Bombay, the High Court at the Presidency town shall be deemed to be a Court of competent jurisdiction within the meaning of sections 187 and 190 of the Indian Succession Act, 1865, wheresoever within the Presidency the property to be Xo comprised in the probate or letters of administration may be situate.

and 1 10

Astrogonda

Administra tor General High Court at Presidency town to be deemed a Court of competent jurisdiction within mean ing of Act \ of 1860 sections 187

(Part III -Of the Rights, Powers and Duties of the Administrator General)

15. Any letters of administration or letters ad colligenda bond. hereafter 'Ito' be granted by the High Court of Judicature at any Presidency town, shall be granted to the Administrator General of the letters of ad Presidency, unless they are granted to the next of kin of the deceased

Administrator General entitled to ministration unless crant ed to next of kin

Administra

The Administrator General of the Presidency shall be deemed by all the Courts in the Presidency to have a right to letters of administration in preference to that of any person merely on the ground of his being a creditor, a legatee other than an universal legatee, or a friend of the deceased

tor General entitled in preference to creditor, non universal legatee or friend

16. If any person, not being a 2[Native Christian], Hindu, Muhammadan, 'Parsil or Buddhist, or a person exempted under the Indian Succession Act, 1865,4 section 332, from the operation of that Act, shall have died, whether within any of the said Presidencies or not, and whether before or after the passing of this Act, and shall have left assets exceeding at the date of the death or within one year thereafter the value of one thousand rupees within any of the said Presidencies,

When Ad ministrator General is to administer estates of persons other

and if no person, to whom the Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such Presidency for probate of his will, or for any letters of administration of his estate.

the Administrator General of the Presidency in which such assets are shall, within a reasonable time after he has had notice of the death of such person, and of his having left such assets as aforesaid, take such proceedings as may be necessary to obtain from the High Court at the Presidency town letters of administration to the effects of such person, either generally or with a will annexed, as the case may require

Whenever the Administrator General of the Presidency takes proceedings under this section, it shall be sufficient if the petition required by section 246 of the Indian Succession Act, 1865, states-

- (a) the time and place of the deceased's death, to the best of the petitioner's knowledge or belief,
- (b) that the deceased left some property within the Presidency as hereinbefore defined, and

The word to was inverted by the Repealing and Amending Act 1891 (All of 1891) General Acts Vol 1971.

Increted by the Native Christian Administration of Estates Act 1991 (VII of 1991)

^{4.} not however, affecting any probate letters of administration or certificate granted

f the Rights, Powers and Duties of the Almenistrator General)

he amount or value of assets which are likely to come into the petitioner's hands

henever any person whether a '[Native Christian], Hindu, idan ' [Parsi] or Buddhist or not, shall have died leaving him the local limits of the ordinary original civil jurisdiction tigh Court at the Presidency town, it shall be lawful for the

the application of any person interested in such assets or in administration thereof, either as a creditor, legatee, next of therwise, or

a the application of a friend of any minor so interested, or

n the application of the Administrator General,

he applicant satisfies the Court that danger is to be apprehended misappropriation, deterioration or waste of such assets unless of administration of the effects of such person are granted.

make an order, upon such terms as to indemnifying the Adminisr General against costs and other expenses as the Court thinks directing the Administrator General to apply for letters of adistration of the effects of such person

Provided that, in the case of an application being made under this tion for letters of administration to the effects of a deceased ¹ (Native ristina), Hindu, Muhammadan, ² [Parsi] or Buddhist, or person empted as aforesaid, the Court may refuse to grant letters of admistration to any person, if it be satisfied that such grant is unnecestry for the protection of the assets, and in such case the Court shall nake such order as to the costs of the application as it thinks just

18 Whenever any person, whether a '[Native Christian], Hindu, Muhammadan '[Parsi] or Buddhist, or not, shall have died, whether before or after the passing of this Act, leaving assets within the local limits of the ordinary original civil jurisdiction of any of the said High Courts,

and such Court is satisfied that danger is to be apprehended of the misappropriation, deterioration or waste of such property, before it can be ascertained who may be legally entitled to the succession to such property, or whether the Administrator General is entitled to letters of administration to such deceased person,

the Court may authorize and enjou the Administrator General to collect and take possession of such property, and to hold or deposit or invest the same according to the orders and directions of the Court,

(I art III -Of the Rights, Powers and Duties of the Administrator General)

and in default of any such orders or directions according to the pro visions of this Act so far as the same are applicable to such property,

and the Administrator General shall be entitled to a commission of I ate of one per centum upon the amount of all moveable assets collected or received by him in pursuance of such order, and also to reimburse himself for all payments made by him in respect of the assets which a private administrator of such assets might lawfully have made.

con mi sion navable in sucl case

and, in case letters of administration of any such property are afterwards granted to the Administrator General, the said commission of one per centum shall be deemed a part payment of the commission payable to the Administrator General under the letters of administration

Any order of Court made under the provisions of this section shall entitle the Administrator General to collect and to take possession of such property, and, if necessary, to maintain a suit for the recovery thereof

19. If in the course of proceedings to obtain letters of administra tion under the provisions of section 16 or section 17.

any executor appointed by a will of the deceased appears according to the practice of the Court and proves the will and accepts the office of executor.

or if any person appears according to such practice and makes out his claim to letters of administration as next of kin of the deceased, and gives such security as is required of him by law or by the practice of the Court.

the Court shall grant probate of the will or letters of administration Cost of accordingly, and shall award to the Administrator General his costs of the proceedings so taken by him, to be paid out of the estate as part of the testamentary or intestate expenses thereof

20 If no person appears according to the practice of the Court Had execu and entitles himself to probate of a will, or to a grant of letters of administration as next of hin of the deceased.

or if the person who entitles himself to a grant of administration neglects to give such security as may be required of him by law or according to the practice of the Court,

the Court shall grant letters of administration to the Administrator istrator General

21 The Administrator General shall, when duly authorized or re quired so to do by the Military Secretary to Government, secure and distribute the assets of the estate and effects of any officer, soldier or other person subject to any Articles of War, in all cases in which such estate and effects do not exceed in the whole five hundred rupees charging the estate with a commission of three per centum only

Grant of probate to executor appearing in ti e course cf proceedings Administra tor General.

proceedings taken by Administrator General to be paid out of estate. tor or next of kin appear or give Decessary.

security administration to be cranted to Admin General A lmmstra-

tor Ceneral in ertain cases to soet te and distribute the effects of soldiers.

(Part III -Of the Rights, Powers and Dulies of the Administrator General)

OPIVOT'I

It shall not be necessary for the Administrator General to take out letters of administration in cases referred to in this section but he shall have the same powers with regard to all such assets as he would have had if he had taken out such letters

Power to grant Administrator (eneral tetters la ted to ni roose of de ling with assets in accordance with Reci mental Delts Act Administra tor General not preel ded from at ply

22 When the Administrator General applies for letters of administration to the effects of any officer, soldier or other person subject to the Articles of War, the Court may grant to him letters of administration limited to the purpose of dealing with such effects in accordance with the provisions of the Regimental Debts Act, 1860,1 or any other law for the time being in force relating to the payment of regimental debts and the distribution of the effects of officers dying on service

23 Nothing in this Act is intended to preclude the Administrator General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased

death
Effect of
probate or
letters grant
ed to Admin
strator
General

ing for letters within one month after

²23A Probate or letters of administration granted by the High Court at Calcutta Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property, to such Administrator General

Provided that the High Court may direct by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidences

Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same

After revocation letters granted to Ad in trator General to be dec d as to l n to 24 If any letters of administration granted to the Administrator General under the provisions of this Act be revoked or recalled the same shall so far as regards the Administrator General and all persons acting under his authority in pursuance thereof be deemed to have been only voidable except as to any act done by any such Administrator

^{*}Coll Stat Vol II Ed 1881 p 770
*S 23 varue reted by the Adm nu trator G neral s Act 1881 (IX of 1881) s 3
Ceneral Acts Vol III

(Part III - Of the Rights, Powers and Duties of the Administrator General.)

General or other person as aforesaid, after notice of a will or of any have been other fact which would render such letters void

voidable only Exception.

Provided that no notice of a will or of any other fact which would Proviso render any such letters void shall affect the Administrator General or any person acting under his authority in pursuance of such letters, ginless, within the period of one month from the time of giving such notice proceedings be commenced to prove the will, or to cause the letters to be revoked, nor unless such proceedings be prosecuted without unreasonable delay

l avments made by Ad ministrator General prior to revocation.

25 If any letters of administration granted under this Act be revoked upon the production and proof of a will, all payments made or acts done by or under the authority of the Administrator General in pursuance of such letters of administration prior to the revocation thereof, which would have been valid under any letters of adminis tration lawfully granted to him with such will annexed, shall be deemed valid notwithstanding such revocation

Pecall of Administra tor General a

26 If an executor or next of kin of the deceased, who has not been personally served with a citation or who has not had notice thereof in time to appear pursuant thereto, establish to the satisfaction of the Court a claim to probate of a will or to letters of administration in preference to the Administrator General, any letters of administration granted by virtue of this Act to the Administrator General may be re called and revoked and probate may be granted to such executor or letters of administration granted to such other person as aforesaid

administration and grant of pro bate etc. to executor or next of kin

Provided that no letters of administration granted to the Adminis trator General shall be revoked or re-called for the cause afor-said, except in cases in which a will or codicil of the deceased is proved in the Presidency, unless the application for that purpose be made within six months after the grant to the Administrator General, and the Court be satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application 13 made

Time within wl ich appli cation to revoke must be made

27 If any letters of administration granted to the Administrator General in pursuance of this Act be revoked the Court may order the costs of obtaining such letters of administration and the whole or any part of any commission which would otherwise have been payable under this Act, together with the costs of the Administrator General in any proceedings taken to obtain such revocation to be paid to or retained by the Administrator General out of any assets belonging to the estate

Costs of obtaining ad n mistration etc bray on revocation be ordered to be paid to Adminis to tor G p ral out of assets

Provided that, in any such case, when the deceased has left a will appointing an executor and probate of the will has been granted by any Court in the Presidency to such executor within three months after the death.

(Part III -Of the Rights, Powers and Duties of the Administrator General)

or when the widow or next of lin has, within one month if resident within the Presidency, or within three months if resident beyond the Presidency, obtained from any such Court letters of administration to the estate and effects of the deceased.

then and in either of such cases the Administrator General shall (without prejudice to the provisions contuined in sections 17 and 18) not be entitled to receive or retain any commission out of any assets belonging to such estate and situate within the jurisdiction of the Court by which probate or administration has been granted as last aforesaid

Distrib ition of assets 128 When the Administrator General has given such notices as would have been given by the High Court in an administration suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution, and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay

Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively

Letters to be granted to Administra tor General by his name 29 All letters of administration granted to any Administrator General in virtue of his office shall be granted to him by his name of

by his name of office all Authority stastif given by such letters Admi

and all letters of administration heretofore granted to the Eccle sinstical Registrar or Administrator General officially, or granted to any Administrator General in virtue of his office, shall authorize the Administrator General for the time being of the same Presidency to act as administrator of the estate to which such letters relate

Grant of probate to Administrator General , named as executor by virtue of his office Transfer by private executor or ad-

ministrator

30 Every probate granted to any Administrator General of a will wherein he is named as executor by virtue of his office shall be granted to him by his name of office, and shall authorize the Administrator General for the time being of the same Presidency to act as executor of the estate to which such probate relates

31 Any private executor or administrator may, with the previous consent of the Administrator General of the Previolency in which the property comprised in the probate or letters of administration is situate,

¹This section was substituted for the original s 28 by the Administrator General's Act 1881 (IX of 1881) s 4 General Acts Vol. III

(Part III -Of the Rights, Powers and Duties of the Administrator General)

by an instrument in writing under his hand, * * * * 1 notified in of interest the local Gazette, transfer all estates, effects and interests vested in bate or him by virtue of such probate or letters to the Administrator General letters. by his name of office,

and thereupon the transferor shall be exempt from all liability as such executor or administrator, as the case may be, for any act or omission in respect of the said property after the date of the said transfer

and the Administrator General for the time being shall have the rights and be subject to the liabilities which he would have had, and to which he would have been subject, if the probate or letters of ad ministration, as the case may be, had been granted to him by his name of office at the date aforesaid

Nothing herein contained shall be taken to exempt any such transferor from liability for acts and omissions in respect of the said

property prior to the transfer

32 Whenever the Administrator General carries over assets to Appointment separate accounts in his books, he shall notify the fact in the local Tros ceas official Gazette, and he may, with the consent of the Official Trustee, irustee of as and subject to such rules as the Governor General in Council may to serverate from time to time prescribe in this behalf, appoint the Official Trustee coins. to be the trustee of such assets and upon such appointment such assets shall vest in the Official Trustee and his successors in office and be held by him and them upon the same trusts as the same assets were held immediately before such appointment. And for the purposes of Act No VII of 1864 2 such assets shall be deemed to have been vested in the Official Trustee under section 10 of that Act

33 All estates, effects and interests which, at the time of the death, Vesting of resignation or removal from office of any Administrator General, are estates etc. in successor vested in him by virtue of such letters of administration, probates or of Administransfers as aforesaid, shall, upon every such death, resignation or trator Ceneral, removal, cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto

All books, papers and documents kept by such Administrator General by virtue of his office or as such executor or transferee as aforesaid shall be transferred to and vested in his successor in office

(b) Suits by and against the Administrator General

34 All suits and other proceedings commenced by or against any Administrator General in his representative character may be brought by or against him by his name of office.

Administra tor General to sue and be sued in his name of

The words bearing a stamp of ten rupees and were repealed by the Indian office Stamp Act 1879 (I of 1879) General Acts Vol I

(Part III -Of the Rights, Powers and Duties of the Alministrator General)

Suit not to shate by death etc and no suit or other proceeding heretofore or hereafter commenced by or against any person as Administrator General, either alone or jointly with any other person, shall abate by reason of the death, re signation or removal from office of any such Administrator General; but the same may, by order of the Court, and upon such terms as to the service of notices or otherwise as the Court may direct, be continued by or against his successor immediately upon his appointment, in the same manner as if no such death, resignation or removal had occurred

Proviso as to costs

Provided that nothing hereinbefore contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the suit against him

Creditors auits against Administra tor General 35 If any suit be brought by a creditor against any Administrator General in his representative character, the plaintiff shall be liable to pay the costs of the suit down to and including the decree, unless upon proof by affidavit or otherwise that not less than one month previous to the institution of the suit he had applied in writing to the Administrator General, strting the amount and other particulars of the claim, and supporting the same by such evidence as, under the circumstances of the case the Administrator General was reasonably entitled to require, and that the Administrator General had refused or neglected to register the claim according to the practice of his office

If in any such suit judgment is pronounced in favour of the plantiff, he shall nevertheless be only entitled to proment out of the assets of the deceased equally and intendity with the other creditors

(c) Grant of Certificates by the Administrator General

In what case Administra for General may grant certificate 36 Whenever any person * * * * * 1 shall have died, whether within any of the said Presidencies or not, whether before or after the passing of this Act and whether testate or intestate and shall have left assets (whether moveable or immoveable or both) within any of the said Presidencies and the Administrator General of such Presidency is satisfied that such assets do not exceed in the whole one thousand it was in value.

he may, after the lapse of one month from the death if he thinks fit or before the lapse of the said month if he is requested so to do by writing under the hand of the executor or the widow or other person entitled to administer the effects of the deceased, grant to any person, claiming otherwise than as a creditor to be entitled to a share of such assets certificates under his hand entitling the claimant to receive the

[&]quot;The words and figures not be ag a Hindu Yuhammadan or Buddhat or exempted under the Ind an Succession Act. 1865 section 332 from the operation of that Act were repealed by the Administrator Generals Act 1881 (Ac f 1881) a 5 General Acts, VOI III

in a Government Savings Bank

letters had been granted to him,

property therein mentioned, belonging to the estate of the deceased,

to a value not exceeding in the whole one thousand rupees

Provided that no certificate shall be granted under this section where probate of the deceased's wi'l or letters of administration of his effects has or have been granted or in respect of any sum of money deposited

where pro bate or ad mi netration granted or for money ın Govern mer t Sav ings Bank. Grant of certificate to

No certificat

137. If, in cases falling within section 36, no person claiming otherwise than as a creditor to be entitled to a share of the effects of the creditors deceased obtains, within three months, a certificate from the Adminis trator General under the same section or letters of administration to the estate and effects of the deceased and such deceased was not a 2 Native Christian'i, Hindu, Muhammadan, Paisi or Buddhist or exempted under the Indian Succession Act, 1865,3 section 332, from the operation of that Act, the Administrator General may administer the estate and effects without letters of administration, in the same manner as if such

and if he neglect or refuse to take upon himself the administration of the estate and effects, he shall upon the application of a creditor and upon being satisfied of his title, grant a certificate in the same manner as if such creditor were entitled to a share of the effects of the deceased.

and such certificate shall have the same effect as a certificate granted under the provisions of the same section, and shall be subject to all the provisions of this Act which are applicable to such certificate

Provided that the Administrator General may before granting such Proviso

certificate, if he think fit, require the creditor to give reasonable security for the due administration of the estate and effects of the deceased

38 The Administrator General shall not be bound to grant any * [certificate under section 36 or 37] unless he be satisfied of the title

of the claimant and of the value of the assets of the deceased, either by the oath or affirmation of the claimant, * * * * * or by such satisfied of other evidence as he requires

Adm mistrator General

not bound to grant certifi class ants title, etc

Suc

1 m

(Part III - Of the Rights, Powers as d Duties of the Administrator General)

Copy of cert1 ficate with re ceipt annexed when signed by certificate holder to be a discharge Right of exe cutor or ad n inistrator against cer tificate holder.

Right of cre ditor against assets in hands of cer tificate. holder

Administra tor Ceneral not bound to take out a l ministration on account of offects for wh ch he has granted certificate. Fee for certs ficate

Transfer of certain assets from British India to exe cutor or ad ministrator in country of domicile or distribution

39. A copy of any such certificate with a receipt annexed shall, when such copy and receipt are signed by the person to whom the certificate has been granted, be a full discharge for payment or delivery to him of the money or security for money therein mentioned, to the person paying or delivering the same

but nothing in this Act shall preclude any executor or administrator of the deceased from recovering, from the person receiving the same. the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration

And any creditor or claimant against the estate of the deceased shall be at liberty to recover his debt or claim out of the assets received by such person and remaining in his hands unadministered, in the same manner and to the same extent as if such person had obtained letters of administration to the estate of the deceased

40 The Administrator General shall not be bound to take out letters of administration to the estate of any deceased person on account of the effects in respect of which he grants any such certificate, but he may do so if he discover any fraud or misrepresentation made to him, or that the value of the estate exceeded one thousand rupces

41 For every such certificate the Administrator General shall be entitled to charge a fee calculated after the rate of three rupees in the hundred on the amount mentioned in the certificate

141A Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death and proceedings for the administration of his estate with respect to assets in British India have been taken under section 36 or section 37, and there has been a grant of administration in the country of domicile with respect to the assets in that country.

the holder of the certificate granted under section 36 or section 37, or the Administrator General, as the case may be, after having given such notices as the High Court may by any general rule to be made from time to time prescribe, for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the

^{18 41}A was inserted by the Indian Succession Law Amendment Act, 1890 (II of 1890), s 12 General Acts Vol. IV

1874 : Act II.7

(Part III - Of the Rights, Powers and Duties of the Administrator General)

executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons

- (d) Expenses of the Administrator General's Establishment
- 42. The Administrator General shall defray all the expenses of the establishment necessary for his office, and all other charges to which the said office is subject, except those for which express provision is made by this Act

Administra tor General to defray expenses of establishments

(e) Accounts and Schedules

43 The Administrator General of each of the said Presidencies Administra shall enter into books, to be kept by him for that purpose, separate and distinct accounts of each estate, and of all such sums of money, bonds and other securities for money, goods, effects and things as come to his hands, or to the hands of any person employed by him or in trust for him under this Act, and likewise of all payments made by him on account of such estate and of all debts due by or to the same, specifying

tor General to keep separate account for each estata

the dates of such receipts and payments respectively Such books shall be kept in the Administrator General's office, and shall be open for the inspection of all such persons, practitioners in the said Courts and others, as may have occasion to inspect the same, at office hours, paying only such reasonable fee for the time being fixed by the Government and published in the official Gazette of the Presidence to which the same may relate 1

Accounts to be open to inspection on payment of

44 The Administrator General of each of the said Presidencies Administrashall twice in every year, that is to say, on or before the first day of April, and on or before the first day of October, or on such other days as the Government, by any rules or orders to be published as aforesaid. may direct, exhibit and deliver, in the High Court at Calcutta, Madras or Bombay, as the case may be .-

tor General to furnish half yearly schedules

- (a) a schedule showing the gross amount of all sums of money received or paid by him on account of each estate in his charge, and the balances, during the period of six months ending severally on the thirty-first day of December and thirtieth day of June next before the day of delivering such schedule.
- (b) a list of all bonds or other securities received on account of each of the said estates during the same period.

For fers meser had under the . .

(Part IV - Of the Audit of the Administrator General's Accounts)

(c) a schedule of all administrations whereof the final balances have been paid over to the persons entitled to the same, during the same period, specifying the amount of such balances and the persons to whom paid

Schedules to be filed and published Copies of schedules Such schedules shall be filed of record in such High Court, and shall, within fourteen days afterwards, be published in the official Gazette of the Presidency by the Administrator General, and copies thereof in triplicate shall be delivered by such Administrator General to the Government, and shall be sent by such Government to the Secretary of State for India, in order that such Secretary may, if he think fit, order the same to be deposited at the India Office for public inspection, and cause notices to be published in the London Gazette and other leading newspapers that such schedules are open to inspection there, or make such orders respecting the same as he thinks fit

PART IV

OF THE AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS

Government to appoint anditors 45 The Government shall from time to time appoint auditors to examine the accounts of the Administrator General at the times of the delivery of the said schedules, and also at any other time when the Government thinks fit.

Auditors to examine subedules and report to Government

- 46 The auditors shall examine the schedules and accounts, and report to the Government-
 - (a) whether they contain a full and true account of everything which ought to be inserted therein,
 - (b) whether the books which by this Act, or by any such general rules and orders as bereinafter mentioned, are directed to be kept by the Administrator General, have been duly and regularly kept, and
 - (c) whether the assets and securities have been duly kept and in vested and deposited in the manner prescribed by this Act, or by any such rules and orders to be made as aforesaid

Auditors to summon * witnesses and to call for books, atc 47. Every auditor shall have power to summon as well the Administrator General as any other person whose presence he thinks necessary, to attend him from time to time, and to examine the Administrator General or other person if he thinks fit, on oath or affirm atton to be by him administered, and to call for all books, papers, youchers and documents which appear to him to be necessary for the purposes of the said reference

(Part IT .- Of the Audst of the Administrator General's Accounts.)

If the Administrator General or other person when summoned refuses, or, without reasonable cause, neglects to attend or to produce any book, paper, voucher or document so required, or attends and refuses to be sworn or make an affirmation, or refuses to be examined, the auditors shall certify such neglect or refusal in writing to the High Court at the Presidency town

and every person so refusing or neglecting shall thereupon be punish Penalty for able in like manner as if such refusal or neglect had been in contempt non attend of the said High Court

ance

48 The costs and expenses of preparing and publishing the said Costs of schedules and copies thereof, and of every such reference and examination preparing as aforesaid, shall be defraved by all the estates to which such schedules etc or accounts relate

Such costs and expenses, and the portion thereof to be contributed by each of the said estates, shall be ascertained and settled by the auditors, subject to the approval of the Government, and shall be paid out of the said estates accordingly by the Administrator General

49 If upon any such reference and examination the auditors see Special reason to believe that the said schedules do not contain a true and correct Government account of the matters therein contained or which ought to be therein if accounts contained, or that the assets have not been duly kept and invested or appear deposited in the manner directed by this Act, or by any such rules and orders as aforesaid or that the Administrator General has failed to comply with the provisions and directions of this Act or of any such rules and orders, they shall report accordingly to the Government

50. The Government may refer every such report as last aforesaid Proceedings to the consideration of the Advocate General for the Presidency, who upon such shall thereupon, if he think fit, proceed summarily against the defaulter or his executor or administrator in the High Court in the Presidency town, by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the estates then or formerly under the ad ministration of such defaulter.

And the said Advocate General may exhibit interrogatories to the said Administrator General, executor or administrator (hereinafter called the defendant), who shall be bound to answer the same as fully as if a commission had been issued under the provisions of the Code of Civil Precedure 1 for his examination upon the said interrogatories

The Court shall have power upon any such petition to compel the attendance in Court of the defendant and any witnesses who may be thought peressary, and to examine them orally or otherwise as the said

^{&#}x27; Ace now the Code of Cavil Procedure 1903 (Act V of 1903) General Acts, Vol. VI

Costs of re ference etc

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(Part IV -Of the Audit of the Administrator General's Accounts. -Of the Commission of the Administrator General)

Court thinks fit, and to make and enforce such order or orders as the Court thinks just

51. The costs, including those of the Advocate General and of the reference to him, if the same be directed by the Court to be paid, shall be defrayed either by the defendant or out of the estates rateably as the said Court directs, and whenever any costs are recovered from the defendant the same shall be repaid to the estates by which they have been in the first instance contributed, and the Court may, if it think fit, order the defendant to receive his costs out of the said estates

PART V

OF THE COMMISSION OF THE ADMINISTRATOR GENERAL

52 The Administrator General of each of the said Presidencies. to be received under any letters of administration granted to him in his official character, or under any probate granted to him of a will wherein he is named as executor by virtue of his office, or under any probates or letters of administration vested in him by section 8 or section 31, shall be entitled to receive a commission at the following rates respectively, namely -

The Administrator General of Bengal at the rate of three per centum, and the Administrators General of Madras and Bombay respectively at the rate of five per centum, upon the amount or value of the assets which they respectively collect and distribute in due course of administration

53 The last preceding section shall not apply to cases in which not to apply the property of an officer or soldier dying on service comes to the to property hands of the Administrator General of any of the said Presidencies. and soldiers under the 9th or the 12th section of the Statute called the Regimental Debts Act, 1863,1

and such Administrator General shall not take a percentage on any Commission

on such prosuch property exceeding three per centum on the gross amount coming to his hands after the passing of the Administrator General's Act, Vol. 1865,2 if preferential charges as defined by the 4th section of the said Statute have been previously paid, or on the gross amount remaining in his hands after payment by him of such charges, as the case may be

54 The Administrator General shall be entitled to reimburse himself for any payments made by him in respect of any estate in his charge, which a private administrator of such estate might have law-

Coll Stat , Vol II, Ed 1881 p 770 Act IV of 1865 was repealed by Act \VII of 1867 and the latter by the present Act

(Part T -Of tle Commission of the Administrator General)

fully made, but, save as aforesaid the commission to which the Ad ministrator General of each of the said three Presidencies shall be entitled is intended to cover, not merely the expense and trouble of collecting the assets, but also his trouble and responsibility in distribut ing them in due course of administration

It is therefore enacted that one half of such commission shall be Howpsyable payable to and retained by such Administrator General upon the collection of the assets, and the other half thereof shall be payable to the Administrator General who distributes any assets in the due course of administration, and may be retained by him upon such distribution

The amount of the commission lawfully retained by an Adminis trator General upon the distribution of assets shall be deemed a distribution in the due course of administration within the meaning of distribution this Act

Commission retained to be deemed a

Explanation -The carrying of assets to separate accounts in the books of the Administrator General notified as hereinbefore provided. and the transfer of assets to the Official Trustee, shall each be deemed to be a distribution within the meaning of this section

55 The Governor General in Council may from time to time order the rate of commission hereinbefore authorized to be received by the Administrator General of Bengal to be raised to any rate not exceeding five per centum upon the amount or value of the assets which he collects and distributes in due course of administration, and again to be reduced

Commission of Administrator Gen eral of Bengal may be raised and again re duced.

The Governments of the Presidencies of Fort St. George and Bombay respectively may, with the sanction of the Governor General in Council. from time to time order the aforesaid rate of commission hereby authorized to be received by the Administrators General of Madras and Bombay respectively to be reduced, and again to be raised

Commission of Adminis trators General of Madeas and Bombay n ay be reduced and acain raised Prov 180

Provided that the commission so to be received shall not at any time exceed five per centum of the assets collected, and that no person now holding the office of Administrator General of Bengal, Madras or Bombay shall, by any such order, be deprived of the right to receive and retain, for his own use, a commission at the rate of three per centum in respect of all assets collected and actually administered by him

155A. Notwithstanding anything hereinbefore contained, an Ad. Commission ministrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of

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^{&#}x27;S "51 was inserted by the Administrator General's Act 1831 (IV of 1831) a 7 General Acts, Vol III

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(Part VI - Mescellaneous)

such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate.

56.1* * * * * * * *

PART VI.

MISCELLANEOUS.

Power to 57. The Government may from time to time make rules 2 consistent make rules— with the provisions of this Act—

- (a) for the safe custody of the assets and securities which come to the hands or possession of the Administrator General,
- (b) for the remittance to the India Office of all sums of money payable or belonging to persons resident in Europe, or in other cases where such remittances are required,
- (c) generally for the guidance of the Administrator General in the discharge of his duties,

and may by such rules amongst other things direct what books, account and statements, in addition to those mentioned in this Act, shall be kept by the Administrator General, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the assets and securities belong ing to the estates to be administered by such Administrator General shall be kept and invested or deposited pending the administration thereof, and how and at what rate or rates of exchange any remittances thereof shall be made

° O, and

¹ S. 56 was repealed by the Administrator General and Official Trustees Act, 1902 (V of 1902) s. 4 (1) General Acts Vol V Section 56 was as follows — No person other than the Administrator General acting

Section 56 was as follows—No person other than the Administrator General acting officially shall receive or retain any commission or agency charges for anything done as executor or administrator under any probate or letters of administration or letters at callingenda bond which have been granted by the Supreme Court or High Court at Fort 1972 of the appointment of an 1972 of 1972

but this enactment shall not prevent any executor or other person from having the benefit of any legacy bequeathed to him in his character of executor, or by way of cim mission or otherwise

(Part FI - Miscellaneous)

Unless any such rules are made and published, the rules now in Proviso as to force in each of the said Presidencies, so far as the same are not inconsistent with this Act, shall be of the same force and effect as if the same had been made and published hereunder

rules now in

58. Such rules shall be published in the Gazette of India, the Fort Publication St George Gazette, or the Bombay Government Gazette, as the case may he, and the several Administrators General shall obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof

59 The Governor General in Council may from time to time, either Power to by general rule, or by special order in a particular case, decide any question as to the time at which any commission accruing to the Ad ministrator General in his official capacity shall be deemed to have been payable, and such decision shall bind every Administrator General and the estates held by him in his official capacity

decide when D 19510D shall be deer ed payable

60. Any order made under this Act by any Court shall have the Order of same effect and be executed in the same manner as a decree

Court to be eq avalent to

160A The Administrator General may, whenever he desires, for Lower to the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question

era me on

61 Whoever, having been sworn or having taken an affirmation Folsceyunder this Act, makes upon any examination authorized by this Act a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding

62 All assets in the official charge of the Administrator General of Assets any of the said Presidencies, and appearing from the official books i claimed and accounts of the Ecclesiastical Registrar and of the Administrator versto be General of any of those Presidencies or from the official books and trafferred accounts of any of those officers, to have been in official custody for a went period of fifteen years or upwards without any claim thereto having been made and allowed, shall be transferred and paid to the Comptroller General of Accounts or to the Accountant General to the Government of Fort St George or Bombay as the case may be and be carried to the account and credit of the Government of India for the general purposes of Government.

and the receipt of the said Comptroller General or Accountant General, as the case may be, shall be a full indemnity and disclarge to the said Administrator General for any such transfer or payment

S 60 \ was in crted by the Administrator General's Act 1831 (IN of 1831) s 3

(Part VI -Miscellaneous)

Proviso

Provided that this Act shall not authorize the transfer or payment of any such proceeds as aforesaid, pending any suit heretofore or hereafter instituted in respect thereof

Mode of proceeding by claimint to recover principal money so transferred 63 If any claim be hereafter made to any part of the securities moneys or proceeds carried to the account and credit of the Govern ment of India under the provisions of this Act, and if such claim be established to the satisfaction of the Comptroller General or the Ac countant General to the Government of Fort St George or Bombay, as the case may be the Government of India shall pay to the claimant the amount of the principal so carried to its account and credit or so much thereof as appears to be due to the claimant

If the claim be not established to the satisfaction of the said Comptroller General or Accountant General, as the case may be, the claimant may apply by petition to the High Court at the Presidency town against the Secretary of State for India, and, after taking evidence either orally or on affidavit in a summary way as the Court thinks fit, the Court shall make such order on the petition for the payment of such portion of the said principal sum as justice requires, and sucl order shall be binding on all parties to the suit,

and the Court may direct by whom the whole or any part of the

costs of each party shall be paid

64 Whenever any person, other than a '[Native Christian], Hindi Muhammadan, '[Parsi] or Buddhist or a person exempted under the Indian Succession Act, 1865, section 332, from the operation of that Act, dies leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator General of the Presidency, stating the following particulars so far as they may be known to him —

(a) the amount and nature of the assets,

(b) whether or not the deceased left a will, and, if so, in whose custody it is,

and, on the lapse of one month from the date of the death

(c) whether or not any one has applied for probate of the will
of the deceased or letters of administration to his effects

The District Judge shall retain the property under his charge, or appoint an officer under the provisions of the Indian Succession Act, 1865, section 239, to take and keep possession of the same until the Administrator General has obtained letters of administration, or until

Indge in certain cases to take charge of property of deceased per sons and to report to Administrator Ceneral

District

(Part VI - Mascellaneous)

some other person has obtained such letters or a certificate from the Administrator General under the provisions of this Act, when the property shall be delivered over to the person obtaining such letters of administration or certificate, or, in the event of a will being discovered, to the person who may obtain probate of the will

1 [The District Judge may cause to be paid out of any property of which he or such officer has charge, or out of the proceeds of such property or of any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely -

- (a) the payment of the expenses of the funeral of the deceased and of obtaining probate of his will or letters of administration to his estate and effects.
- (b) the payment of wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant, and
- (c) the relief of the immediate necessities of the family of the deceased.

and nothing in section 279 section 280 or section 281 of the Indian Succession Act, 1865 2 or in any other law for the time being in force with respect to rights of priority of creditors of deceased persons shall be held to affect the validity of any payment so caused to be made]

65. Nothing in this Act is intended to require the Administrator General to take proceedings to obtain letters of administration to the estate or effects of any officer or soldier or other person subject to any Articles of War, unless when the Administrator General is duly authorized or required so to do by the Military Secretary to Government, or by a Committee of Adjustment or other officers or persons acting under any law for the time being in force relating to the pay ment of regimental debts.

oure admin istration of estates of sol diers unless Adn inictra tor Ceneral nutl orized by Mi stary Secretary or Committee of Adjustment.

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nor is anything in this Act contained intended to interfere with or alter the provisions of any Act of Parliament for regulating the payment of regimental debts and the distribution of the effects of officers and soldiers dying in the service of Her Majesty in India, or of any Articles of War

66 Nothing contained in the Indian Succession Act 1865 2 or the Succession Indian Companies Act 1866,3 shall be taken to supersede or affect the rights, duties and privileges of the Administrators General and Officiat Administrators General of Bengal, Madras and Bombay respectively

Act and Companies Act not to affect Admin 1strator Gen

Vol III

the Indian Succession Law Amendment Act.

1 1

(Past VI - Miscellaneous Past I II - Division of the Presidency of Bengal into Provinces)

Saving of provision of Presidency I olice Acts as to p tty cstates And nothing contained in the Indian Succession Act, 1865,° or in x this Act, or in the said Act No \(^{1}V\) of 1867,° shall be deemed to affect, or to have affected, any provisions for the time being in force relating to the moveable property under two hundred rupees in value of persons dying intestate within any of the presidency-towns, which shall be or has been taken charge of by the police for the purpose of safe custody

Compliance with requisitions for returns ⁴ 67 The Administrator General shall comply with such requisitions any be made by the Government for returns and statements, in such form and manner as the Government may deem proper

5 PART VII

DIVISION OF THE PRESIDENCY OF BENGAL INTO PROVINCES

Division of the Preu dency of Bengal into Bengal into He Governor General in Council, upon the occurrence of any vacancy in the office of the Administrator General of Bengal, may, by notification in the Gazette of India,—

- (a) divide the Presidency of Bengal, as defined in this Act, into so many Provinces as he thinks fit,
- (b) define the limits of each of those Provinces, and
- (c) appoint an Administrator General for each Province,

and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely --

- (1) the office of Administrator General of Bengal shall cease to exist
- (1) the Administrator General of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province, as the Administrator General of Bengal had and performed as Administrator General therein.
- (111) the functions of the Government under this Act shall, as re gards the territories and dominions included in a Province, be discharged by the Governor General in Council

General Acts Vol I

Code, and (a

¹⁸⁰⁰⁾

^{*} Part VII was added by the Indian Succession Law Amendment Act, 1800 (II of 1800) * 15 ibid

(Part VII - Division of the Presidency of Bengal into Provinces)

- (iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court at Calcutta in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf, and probate or letters of administration granted to the Administrator General of the Province by the High Court so appointed shall have the same effect throughout the Presidency of Bengal, as defined in this Act, or, if the Court so directs, throughout British India, as, but for the abolition of the office of Administrator General of Bengal, probate or letters of administration granted to the holder of that office by the High Court at Calcutta would have had
- (v) in the foregoing provisions of this Act the word "Presidency" shall be deemed to include a Province the expression "Presidency town" the place of sitting of a High Court appointed by the Governor General in Council under clause (vv) of this sub-section, and the expression "Advocate General a Government Advocate or other officer appoint ed by the Governor General in Council to discharge for a Province the functions under this Act of an Advocate General for a Presidency

(vi) the provisions of this Act with respect to the commission of the Administrator General of Bengal shall regulate the commission payable to the Administrator General of a Province and

- (vii) generally, the provisions of the foregoing sections of this Act with respect to the High Court at Calcutta and the provisions of those sections or of any other enactment with respect to the Administrator General of Bengal, shall, in relation to a Province be construed so far as may be to apply to the High Court and Administrator General, respectively appointed for the Province under this section
- (2) Any proceeding which was commenced before the publication of the notification dividing the Presidence of Hengal into Provinces and to or in which the Administrator General of Bengal in his representative character was a party or was otherwise concerned shall be continued as if the notification had not been published, and the Administrator General of the Province in which the Town of Calcutta is comprised shall for the purposes of the proceeding be deemed to be the successor in office of the Administrator General of Bengal

^{&#}x27;Sub section (5) was repealed by the Lower Burma Courts Act 1000 (\I of 1000)
43 and Sch. II
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reamble

Administrator General

F1874 Act II

(Part VII - Division of the Presidency of Bengal ento Provinces)

Marised Women's Property [1874 Act III

(4) Notwithstanding any division of the Presidency of Bengal, as defined in this Act, into provinces under this section, the Administrator

General of the Province in which the Town of Calcutta is comprised shall be deemed to be the Administrator General for the whole of the said Presidency for the purposes of the Regimental Debts Act, 1863 1

26 &

ACT No TIL or 1874 2

[24th February 1874]

An Act to explain and amend the law relating to certain married women, and for other purposes

Whereas it is expedient to make such provision as hereinafter ap pears for the enjoyment of wages and earnings by women married before the first day of January, 1866, and for insurances on lives by persons married before or after that day

And whereas by the Indian Succession Act, 1865 3 section 4 it is X of I enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she

And whereas by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from

¹ Coll Stat Vol II Ed 1881 p 770

could have done if unmarried

1874) s 3 Bur Code

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the Sunthil Parganas eet he Santhil Parganas Settlement Regulation (III of 1872)
s 3 as amended by the Santhil Parganas Justice and Laws Regulation 1899
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1899 It 1 p 44 It has been extended by notification under a 5 of the same Act to the Scheduled District of the North Western Provinces Tarái see Gazette of India 1876 Pt I p 505 General Acts Vol I

(I-Preliminary II - Married Women's Wages and Larnings.)

habilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives

It is hereby enacted as follows .-

I.—Preliminary

1. This Act may be called the Married Women's Property Act, 1874. Short title

2. It extends to the whole of British India, and, so far as regards. Extent and supplies to Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such

marriage, professed any of those religions

And the Governor General in Council may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom he may consider it impossible or inexpedient to apply such provisions

The Governor General in Council may also revoke any such order, but not so that the revocation shall have any retrospective effect

All orders and revocations under this section shall be published in the Gazette of India The fourth section of the said Indian Succession Act is shall not

apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed at the time of the marriage the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion

3 [Commencement] Rep by the Repealing Act, 1876 (XII of 1876)

II -Married Women's Wages and Earnings

"4 The wages and earnings of any neutricd woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband, the first parties of the rest

women's earnings to be their separate property

and also any money or other property so acquired by her through the property exercise of any literary, artistic or scientific skill

and all savings from and investments of such wages, earnings and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property

General Acts Vol I 'C' the married Women's Property Vot 1870 (33 & 34 Vict c 93) s 1, now repealed by the Varried Women's Property Vot 1832 (45 & 46 Vict, c 75)

(III .- Insurances by Wires and Husbands IF - Legal Proceedings by and against Married Women)

III -Insurances by Wives and Husbands.

¹5 Any married woman may effect a policy of insurance on her Married own behalf and independently of her husband, and the same and all woman nay benefit thereof, if expressed on the face of it to be so effected, shall of insurance enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman

26 A policy of insurance effected by any married man on his own Insurance by life, and expressed on the face of it to be for the benefit of his wife, lenefit of or of his wife and children, or any of them, shall enure and be deemed wife to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No XVII of 1864 1 (to constitute an Office of Official Trustee), section 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors

1V -- Legal Proceedings by and against Married Women

47. A married woman may maintain a suit in her own name for Varried the recovery of property of any description which by force of the said nomen may Indian Succession Act, 1865,3 or of this Act, is her separate property, proceedings and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were anmarried

Cf the Married Women's Property Act, 1870 (33 & 34 Vict, c 93), s 10, para 1 Act, 1870 (33 & 34 Vict, c 93), s 10, para 2

Married B'omen's Property.

(Part IV .- Legal Proceedings by and against Mairied Women. Part V -Hushand's liability for Wife's debts)

1874 : Act IV.7 Foreign Recruiting

8. If a married woman (whether married before or after the first Wife's day of January, 1866) possesses separate property, and if any person hability for enters into a contract with her with reference to such property, or on debts the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitle to sue her, and, to the extent of her separate property, to recover against her whatever he mucht have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree

Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied

V -Husband's liability for Wife's debts.

2 9 A husband married after the thirty-first day of December, 1865. Husband shall not by reason only of such marriage be liable to the debts of his wife contracted before mairiage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, he hable to satisfy such debts as if she had continued unmarried

not hable for wife 5 antenuptial debts

Provided that nothing contained in this section shall * * * * * * Provided invalidate any contract into which a husband may before the passing of this Act, have entered in consideration of his wife's antenuptial dehts

ACT No IV of 1874 4

[24th Tebruary 1874]

An Act to control recruiting in British India for the service of

Foreign States WHERE'S it is expedient that the Governor General in Council Preamble

for

^{*}The words 'or render a married wor - ! abla . -- . - . tion

ndia 1874 Pt V p 1. . sbid. 1874. Supplement.

pp 12 and 240 This Act has been declared in force in-Regulation 1874, shid

Upper Burma generally (except the Shan States) by s 4 (1) and Sch I of the Burma Laws let 1893 (VIII of 1893) Bur Code
the Vilan Hill District, see s 3 and S hedule to the Arakan Hill District Laws

should exercise full control over recruiting in British India for the service of Foreign States, It is hereby enacted as follows —

1. This Act may be called the Foreign Recruiting Act, 1874

Short title Local extent

It extends to the whole of British India
[Commencement] Rep by the Repealing Act, 1876 (XII of 1876)

"Foreign 2 In this Act-

"Toreign State" includes any person or persons exercising or assuming to exercise the powers of Government in or over any country, colony, province or people beyond the limits of British India

Power to prohibit or permit recruiting

defined

3 If any person is, within the limits of British India, obtaining or attempting to obtain recruits for the service of any Foreign State in any capacity, the Governor General in Council may, by order in writing signed by a Secretary to the Government of India, either prohibit such person from so doing, or permit him to do so subject to any conditions which the Governor General in Council thinks fit to impose

Power to impose con ditions 4 The Governor General in Council may from time to time, by general order notified in the Gazette of India, either prohibit recruiting for the service of any Toreign State, or impose upon such recruiting any conditions which he thinks fit

Power to res and or vary orders. Offences 5 The Governor General in Council may rescind or vary any order made under this Act in such manner as he thinks fit

6 Whoever, in violation of the prohibition of the Governor General in Council, or of any condition subject to which permission to recruit may have been accorded,—

- (a) induces or attempts to induce any person to accept or agree to accept or to proceed to any place with a view to obtaining any commission or employment in the service of any Toreign State, or
- (b) knowingly aids in the engagement of any person so induced, by forwarding or conveying him or by advancing money or in any other way whatever,

British Baluchistan and the Agency Territories see the Baluchistan Laws Regula tion 1890 (1 of 1890) s 3 Bal Code and the Baluchistan Agency Laws Law, 1890 thd

It has been declared by notification under s 3 (a) of the Scheduled D stricts Act 1874 (VIV of 1874) printed ufra to be in force in the following Scheduled Districts, namely—

It has been extended by notification under s 5 of the same Act to the Scheduled District of the North Western Provinces Taria see Gazette of India, 1876 Pt. I, p 505 Tle Foreign Indistrient Act 1870 (33 2.4 Vict c 90) applies only when the recruiting is for the service of any foreign State at wer with any foreign State at peace with Her Majesty

provisions of the Code of Criminal Procedure 1

1874 : Act IV.1 1874 · Act TX 1

shall be liable to imprisonment for a term which may extend to seven years, or to fine to such amount as the Court thinks fit, or to both

7. Any offence against this Act may be enquired into and tried, as Place of trial well in any district in which the person accused may be found, as in any district in which it might be enquired into and tried under the

THE EUROPEAN VAGRANCY ACT, 1874

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² See now the Code of Criminal Procedure, 1833 (Act V of 1838), General Acts Vol. V

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THE FIRST SCHEDULE .- FORM OF CERTIFICATE THE SECOND SCHEDULE .- FORM OF AGREEMENT.

ACT No. 1X or 1874 1

17th April 1874 \

An Act to consolidate and amend the Law relating to European Vagrancy.

WHEREAS It is expedient to consolidate and amend the laws relating Preamble

1 Lans Act, 1833

(I of 1894), s 3, Ben Code, British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890),

..

Bal Code, the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (IA of 1874), s 3, Bur Code

r the Santhal Parganas Settle Parganas Justice and Laws

the Scheduled Districts Act, tollowing Scheduled Districts,

¹ For the Statement of Objects and Reasons, see Gazette of India, 1873, Pt V, p 399, for Proceedings in Council, see sbid, 1874, Extra Supplement, August 23rd, pp 10 and 14,

to persons of European extraction who wander in a destitute condition throughout India, It is hereby enacted as follows —

PARTI

PRELIMINARY.

Short title

1 This Act may be called the European Vagrancy Act, 1874

It extends to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty,

Commence ment. And it shall come into force at once Provided that sections 4 to 16 (both inclusive), 19, 20, 24 and 29, shall not come into force in Coorg or in the Andaman and Nicobar Islands, or in any of the dominions of the Princes and States in India in alliance with Her Majesty not situate within the limits of any Presidency, Liceitenant Governor ship or Chief Commissionership in British India, until such day or respective days as the Governor General in Council from time to time, by notification in the Gazette of India, appoints in this behalf

Repeal of Acts

Interpreta-

tion clause

Person of European

extraction '

2 Acts No XXI of 1869 (to provide against European Vagrancy) and No XXVIII of 1871 (to amend the European Vagrancy Act, 1869,) are hereby repealed

But all appointments and orders made, workhouses provided, certificates given, powers conferred, rules prescribed and exemptions granted under the former Act shall be deemed to have been respectively made, provided, given, conferred, prescribed and granted under this Act

3 In this Act-

2" person of European extraction" includes-

- (a) persons born in Europe, America, the West Indies, Australia,
 Tasmania. New Zealand. Natal or the Cape Colony.
- (b) the sons and grandsons of such persons,

but does not include persons commonly called Eurasians or East Indians

It has been extended by notification under s 5 of the same Act to the Scheduled Dist 05, and

(Part II -Procedure)

"vagrant" means a person of European extraction found asking for 'Vagrant" alms, or wandering about without any employment or visible means of emberetonce

"master of a ship" includes any person in charge of a decked Master of ressel

Magastrate "

and in Parts III and V of this Act "Magistrate" means, within the limits of the towns of Calcutta, Madras and Bombay, a Magistrate of Police 1 and, outside those limits, a person exercising powers under the Code of Criminal Procedure 2 not less than those of a Magistrate of the second class

PART II PROCEDURE.

4. Any police officer may, within the limits of the towns of Calcutta, Power to Madras and Bombay, require any person who is apparently a vagrant to require ap accompany him or any other police-officer to, and to appear before, the vagrant to go nearest Magistrate of Police 1 and may, without those limits, require perstend any such person to accompany him or any other police officer to, and to appear before, the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure 2

before Mag

5 The Magistrate of Police 1 or Justice shall in such case or in any Summary other case where a person apparently a vagrant comes before him make vagrant scir a summary inquiry into the circumstances and character of the appa rent vagrant, and if he is satisfied that such person is a vagrant he shall of vagrancy record in his office a declaration to that effect

If he is further of opinion that the vagrant is not lilely to obtain Orier to go employment at once, or if he has reason to believe that a declaration louve of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government workhouse, and shall draw up an order to that effect

The vagrant shall then be placed in charge of the police for the pur pose of being forwarded to the worl house and the said order shall be a sufficient authority to the police for retaining him in their charge while he is on his way to the workhouse, and to the Governor of the workhouse for receiving and detaining such vagrant

6 Where the officer making the inquiry mentioned in section 5 is Forwarding of opinion that the vagrant is likely to obtain employment in any place place of subject to the Local Government, or (when the vagrant is in any part employment, of the dominions mentioned in section 1) in any place subject to any

^{*}Pead now Previdency Magistrate see Act V of 1833 s 3 General Acts Vol V.
*See now the Code of Criminal Procedure 1833 (Act V of 1833), ibid

(Part II — Procedure)

adjacent Local Government, such officer may in his discretion forward the vagrant to such place in charge of the police, and draw up an order to that effect

Such order shall be a sufficient authority to the police for retaining the vagrant in their charge while he is on his way to such place of em ployment

Assistance to obtain em ployment 7 Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police 1 or Justice of the Peace excreising powers as aforesaid, to whom the order for transmission shall be delivered.

Such officer shall thereupon to the best of his ability, assist the vagrant in seeking employment, and may in the meantime, if he thinl fit, keep the vagrant in the charge of the police

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival such officer shall forward him to a Government workhouse in the manner provided by section 5

Subsistence allowance

8 Every person while in charge of the police, whether before in quiry as to his vagrancy, or while he is on his way, under section 5 to the workhouse, or under section 6, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight an nas per diem

The Magistrate of Police 1 or Justice, before whom any vagrant 1staken under section 7, may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment

The Local Government shall cause such allowance to be paid out of such funds at its disposal and in such manner as it may from time to time direct

Power to give certi ficates 9 Any Magistrate of Police of Justice of the Peace exercising powers as aforesaid may, on being satisfied that any person of Euro pean extraction is not likely to become a tiggrant, give such person a certificate under his hand stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate, and within aprily to the bolder of such certificate, and thereupon, so long as the certificate remains in force, nothing in sections 4, 5, 6 and 7 shall apply to the bolder of such certificate, and thereupon, so long as the certificate remains in force, nothing in sections 4, 5, 6 and 7 shall apply to such person within such limits as aforesaid

Form of certificate,

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit

^{&#}x27;Read now Presidency Mag strate see the Code of Criminal Procedure 1893 (Act V of 1898) s 3 General Acts Vol V

tiaries

(Part II - Procedure Part III - Government Workhouses)

10 The Local Government may from time to time, by notification Power to in in the official Gazette, invest any Justice of the Peace District Super intendent of Police or Assistant District Superintendent of Police with the jurisdiction and powers conferred by this Part on a Justice of the under sections Peace exercising powers as aforesaid

vest certain officials with 1 risdiction of Justices 5 7 8 and 9

PART III

GOVERNMENT WORKHOUSES

2 11 The Local Government, with the previous sanction of the Gov ernor General in Council, may provide workhouses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants,

Provision of Government workhouse

or may, by writing under the hand of a Secretary to such Govern ment, certify any building, or part of a building not provided as a workhouse under the former part of this section, to be fit for a work house for the purposes of this Act Every such certificate shall be pub lished in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, he deemed a Government workhouse under this Act

The Local Government shall allow the same scale of dust for the Scale of dust support of vagrants received in such workhouses as is for the time be ing allowed for Europeans confined in the local prisons or peniten

3 12 Every such workhouse shall be under the immediate charge of a Governor, who shall be appointed and may be suspended or removed by the Local Government

Superintend ence of work

Every such Governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or, in the absence of a committee, to the orders of such officer as the Local Government from time to time appoints in this behalf

see Bur R. M
see R W P & Oudh Last of Local Rules and
Orders Ed 1894 p 45 Burma United Provinces Central Provinces see C P R & O For notifications issued under the powers conferred by this section in-Bombay see Bom. R. & O . see Bur R. M Burma Madras Central Provinces see Central Provinces Gazette 1900 Pt III p 121

(Part III - Government Worklower)

Pasmin of アリケーロしゃ

12. Every such Governor man order that any vagrant admitted to the work's are under his charge shall be searched, and that the vagrant's lundles, parkages and other effects shall be inspected and mandirect tist any money then found with or on the vagrant shall be amplied outpert to the orders of the Loral Government towards the expense of earrying to a Act into execution and mam order that all or anm of the and effects shall be sold and that the produce of the sale be applied as af world but subject to the like orders

District re

Refuest to

arces't rm.

playment

14. Varrants admitted to re-shorres under this Act shall be subject to such rules of management and discipline as may from time to time to prescribed by the Local Government with the previous sanction of the Governor General in Council 1

The Local Government mar authorize any Governor of a workhouse to purish under or not under the supervision and direction of a Comruttee of Management as the Local Government thinks fit) any vacrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely; -

- (a) solitary confinement within the workhouse for any time ret exceeding seven days.
- the solitary confinement within the workhouse for any time not exceeding three days upon a diet reduced to such extent as the Local Government may prescribe;3
- (c) hard labour for any time not exceeding seven days:
- (d) reduction of diet to such extent as the Local Government may prescribe 1 for any time not exceeding five days;

or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in fail for a term which may extend

to three months 15. The Governor and the Committee of Management (if any) of every such worl house shall use his and their best endeavours to obtain outside the workhouse suitable employment for the vagrants admitted

thereto. When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof shall, on conviction before a Magis-

Oudh List of Local Rules and

94, p 43

^{17.}

^{*} For notifications conferring such authority in-

(Part III - Government II orkhouses Part IV .- Remeval from India.)

trate, be punishable with rigorous imprisonment for a term which may extend to one month

PART IV.

REMOVAL FROM INDIA

16. If after the lapse of a reasonable time no suitable employment Removal of is obtainable for any such vagrant, the Local Government may either vagrants, (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from British India in manner hereinafter pro-

Cost of 3 removal '

or it may cause sections 23 and 30 to be read to him and may then release him

yided, the cost of such removal being paid by Government.

17. Any vagrant or other person of European extraction may enter Agreement into an agreement 1 in writing with the Secretary of Sate for India in with Council binding himself-

(a) to proceed to such port in British India as shall be mentioned in the agreement,

- (b) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council,
- (c) to remain on board such ship until she has arrived at her port of destination, and
- (d) not to return to India until five years have elapsed from the date of such embarkation

Every such agreement 2 shall be in the form set Form of forth in the second schedule to this Act annexed, or as near thereto as agreement. circumstances admit

18. The Local Government of the territories in which the said port is situate may enter into such contracts for conveyance or otherwise agreement. and perform such other acts as may be necessary to carry out such agree ment on the part of the said Secretary of State in Council

Power to

For notification requiring that the Commissioner of Police and Justices of the Peace

do obtain Covernment sanction before concluding an agreement with any vagrant, set lad 3 & O and the control of the covernment such as the covernment such as the covernment with any vagrant, set lad 3 & O and the covernment with a covernment with a covernment with a covernment of the covernment with a covernment of the covernment of t

[1874 · Act IX.

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PART V

PENALTIES.

Refusal to go before Magistrate. 19. Any person refusing or failing to accompany a police-officer to, or to appear before, a Magistrate of Police 1 or Justice of the Peace for the purpose of preliminary inquiry, when required so to do under section 4, may be arrested without warrant and shall be punishable, whether he be or not a European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both

Assaulting police And any person who, when required under section 4 to accompany a police officer to, or to appear before, a Magistrate of Police 1 or Justice of the Peace, commits an offence punishable under section 353 of the Indian Penal Code, may, whether he be or be not a European British subject, be tried by a Magistrate for such offence

Escaping from police.

their charge under the orders specified in sections 5 and 6, or who leaves a workhouse, under this Act, without permission from the Governor,

20. Any vagrant who escapes from the police while committed to

Quitting workhouse without leave Failing to

or who having with such permission left a workhouse for a limited time or a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable.

return to workhouse

shall for every such offence be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years

21 Any person entering into an agreement under section 17, and

Failing to proceed to port of embarkation Refusing to go on board ship Escaping

from ship

failing to proceed in pursuance thereof to the port therein mentioned,

or refusing to embark when directed so to do under the same section,

a 1

or escaping from the ship in which he has so embarked before she has reached her port of destination, shall for every such offence be punishable, whether he be or be not

Peturning to 22

a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months 22 Any person returning to India within five years of the date of

his embarkation pursuant to any agreement entered into under section

1 Read now "Prendency Maguirate," see the Code of Criminal Proceders, 1838 (Act
7 of 1839), 8 3, General Acts, Vol V

General Acts. Vol I

17, unless specially permitted so to do by the SecTetary of State for India, shall for every such offence be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

23. Any person of European extraction found asking for alms when Begging he has sufficient means of subsistence.

or asking for alms in a threatening or insolent manner.

or continuing to ask for alms of any person after he has been required to desist.

shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence

24 Every person imprisoned under section 19, 20, 21, 22 or 23 Procedure on shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police 1 or Justice of the Peace exercising powers as aforesaid, who shall, if he think fit, forthwith deal with him in the manner prescribed by sections 5 and 6

or sonment.

The order of transmission shall certify the fact of the previous conwiction

25 Every master of a ship landing or allowing to land in any part Penalty on of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of European an offence which, if committed in Figland would be felony, shall, on conviction before a Magistrate, be liable for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to impri sonment for any term not exceeding two months,

sh pmaster bring ng c hvi ts to

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give) that he had made due enquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid

The Governor General in Council may from time to time, by notifi Power to cation in the Gazette of India, exempt 2 from the operation of the former tain shippart of this section the masters of any class of ships, on such terms as masters, to the Governor General in Council seem fit, and either in respect of all or of any of the persons on board such ships

For notification issued under the powers conferred by s 25 of Act XXI of 1869 which as kept in force by s 2 of this Act see Cazette of India 1870 Pt I p 23 vor 11

^{&#}x27;Pead now Presidency Magistrate see the Code of Criminal Procedure 1993 (Act V of 1893) s 3 (energl Acts Vol V

(Part V - Penalties Part VI - Mescellaneous)

The Governor General in Council may in like manner revoke any exemption made under this section

Recovery of fines.

26. All fines imposed under this Act may be recovered, '[in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts 1

Payment of fines

All fines recovered under this Act shall be paid to the credit of the Government of India, or as the Governor General in Council from timeto time directs

Prose utions

27. All prosecutions under this Act may be instituted and conducted by such officer as the Local trovernment from time to time appoints in this behalf a

Li nits of purisdiction

28. In imposing penalties under this Part and Part III of this Act, no person shall exceed the limits of jurisdiction prescribed by him by the Code of Criminal Procedure 2 in the case of offenders not being European British subjects

Validity of proceedings where Magis trate is not the nearest

29. No proceeding under this Act shall be deemed invalid by reason only that the Magistrate of Police or Justice, before whom a person, apparently a vagrant, was required to appear, or before whom a person of was placed under section 24 was not the nearest

PART VI.

MISCELLANEOUS

Depris ation of privileges of Furopean British sub Jects under 9 Criminal Procedare Code.

30. Any European British subject who, upon the summary enquiry mentioned in section 5, has been determined to be a vagrant, or who has been convicted under section 22 or section 23, shall, so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure 2 (other than those

¹ These words were substituted for the words "af for offences commuted outside the local limits of the towns of Calcutta, Madras and Bombay, in the manner presented by the Code of Crimmit Procedure and if for offences committed within those limits in the manner presented by any Act regulating the police of such towns in force for the time-being" by the Riperaling and Amending Act 1821 (V.14 of 1831), General Acts, Vol. 1 V.

See now Act V of 1898, General Acts, Vol V

For notifications issued under the powers conferred by this section in-

⁽¹⁾ Bombay . (2) Burma . . (3) Madras . (4) Central Provinces see Born R & O ,

see Mad R & O

[,] see Central Provinces Gazette, 1905, Pt III, p 12L

^{*}Read now " Presidency Magistrate ' see the Code of Criminal Procedure, 1833 (Act-V of 1898), a 3 (*), Ge ral Acts, Vol. V.

(Part TI - Miscellaneous)

contained in Chapter XXXVIII of the same Code) applicable to a European not being a British subject

If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of this sec Lion

Save as aforesaid nothing herein contained shall be deemed to con fer purisdiction over European British subjects on Magistrates who, if this Act had not been passed, would have had no such jurisdiction

31 Whenever any person of European extraction lands in India, Linbility of or being a non commissioned officer or soldier in Her Majesty's Army leaves that Army in India, under an engagement to serve any other per son, or any Company, Association or body of persons in any capacity,

importers of Europeans or employers of soldiers be

and whenever a sailor of European extraction not being a British vagrants subject is discharged from his ship in any British Indian port.

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the Army, or discharge from his ship, as the case may be, then the person, or Company, Association or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is at the date of the discharge the owner or agent of the ship from which the sailor has been so discharged, shall be 'Inable to pre to the Government the cost of his removal under this Act. and all other charges incurred by the State in consequence of his be coming a vagrant

Such costs and charges shall be recoverable by suit as if an express Pecovery of agreement to repay them had been entered into with the Secretary of charges. State for India in Council, by the person, Company, Association, body, owner or agent chargeable

charge of

become vagranta.

animals and

32 When any person of Luropean extraction lands in India, being Lubbity of or having been during his passage to India, or from one Indian port to consigned in another, in charge of or in attendance upon any animal, and becomes peans who chargeable to the State as a vagrant within one year after his arrival arrive in rın India, then

the consignee of such animal,

or the agents in India for the sale of such animal.

or, if such consignee or agents cannot be found, the agent to whom the ship in which such animal arrived in India was consigned.

shall be liable to pay the Government the cost of such person's re-

See now Chapter VIII of the Code of Criminal Procedure 1893 (Act V of 1893) General Icts Vol. V

'Consignee' defined

' Agent defined.

Fyidence of declaratun

Exercise of

power con

ferred on

Local Cov ernment

Frercise in Native States

of powers

conferred on Magustrates

Justices and

Power to

make rules for guidance

ersolle la

Police

(Part VI - Miscellaneous The First Schedule)

moval under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant

Any such consignee or agent shall be entitled to charge the consignor

or principal for any payment to the Government under this section For the purposes of this section "consignee" includes any person who undertakes to dispose of such animal for the benefit of the con signor, and

"agent" includes any person who undertakes the agency of such ship, though it may not have been consigned to him

33 In any proceeding under this Part, a certified copy of the declaration recorded under section 5 shall be prima facie evidence that under section the European British subject named therein has been upon the sum mary enquiry mentioned in that section, determined to be and that he-

was at the date of the declaration a vagrant 34 The powers and duties conferred and imposed by sections 16and 18 on a Local Government may be exercised and performed by such class of officers as the Local Government 1 from time to time, by notifi cation in the official Gazette appoints in this behalf

35 The powers and duties conferred and imposed by this Act on Magistrates Justices of the Peace exercising the powers of a Magistrate of the first class and police officers respectively may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Governor General in Council from time to time, by notification in the Gazette of India, appoints in this behalf

36 The Governor General in Council may from time to time make rules 2 consistent with this Act, for the guidance of officers in matters connected with its enforcement

All such rules shall be published in the Gazette of India, and shall thereupon have the force of law

THE FIRST SCHEDULE

(See section 9)

, a person of European extrac Whereas E F of tion and holder of this certificate, has appeared before me and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrance Act 1874, THESE ARE TO CERTIFY that for the space

For notifications making such direct on in-(1) Bombiy see Bom (2) Midras see Mad see Bom R & O

²² Northers 22 No. 12 No. 22 N

of

(The First Schedule. The Second Schedule)

months from the date hereof and within the Province [or

District] of nothing in sections 4, 5, 6 and 7 of the same Act shall be deemed to apply to him, unless he is found asking for alms in which case this certificate shall be void

(Signed) G H,

Dated this

day of

Magistrate of Police 1 for the town of or Justice of the Peace for exercising the powers of a Magistrate of the class

THE SECOND SCHEDULE

(See section 17)

ARTICLES OF AGREEMENT made this day of 18 netweet the Secretary of State for India in Council of the one part and C D of, etc [the cagrant] of the other part, Each of the parties hereto (so far as relates to the acts on his own part to be performed) hereby agrees with the other of them as follows —

- 1 The said C D shall proceed forthwith to the port of [the port of
- embarl atton]
 2 The said C D shall there embark on board such ship and at such time as an officer appointed in this behalf by the Local Government shall direct
- 3 The said ℓ D shall remain on board such ship until she shall have arrived at her port of destination
- 4 The said C D shall not return to India until five years shall have elapsed from the date of such embarkation unless specially permitted so to return by the said Secretary of State
- 5 The said Secretary of State in Council shall defray the cost of the transit of the said C D to the said port, and of his lodging and subsistence during such trunsit and during his detention (it any) at the same port and shall contract with the owner of the said ship or his agent for the passage of the said C D on board the said ship and for his subsistence during the voyage for which he shall embark as afore said

In witness whereof A B by order of the Governor General of India in Council [or the Governor of in Council or the Lieutenant Governor of , or the Chief Commissioner of] on behalf of the said Secretary of State in Council and the said C D have hereunto set their hands the day and year first above written

¹ Post now Pres dency Magnetrate see the Code of Criminal Procedure 1893 (Act

THE SCHEDULED DISTRICTS ACT, 1874

CONTENTS

PREAMBLE

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- Interpretation clause 2 Repeal of enactments
- 2 Repeat of enactments
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- 5 Power to extend enactments to Scheduled Districts
- 5A Modification of enactments in their application to Scheduled Districts
- 6 Appointment of officers and regulation of their procedure
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- 9 Place of imprisonment or transportation
- 10 Extension to Satua strip of Acts relating to public gambling and pandhari tax
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SCHEDULES

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- .. II -Scheduled Districts, Bombay
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X -THE CHIEF COMMISSIONERSHIP Or Assam

XI -THE HILL TRACTS OF ARAKAN

, XII -THE PARGANA OF MANPUR

, MIII -[Repealed]

THE SECOND SCHEDULE -ENACTMENTS REPEALED

ACT No. XIV of 1874 1

[8th December 1874]

An Act to ascertain the enactments in force in various parts of British India, and for other purposes

WHERE'S various parts of British India have never been brought Preamble within, or have from time to time been removed from, the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature

And whereas doubts have arisen in some cases as to which Acts or Regulations are in force in such parts, and in other cases as to what are the boundaries of such parts. And whereas among such parts are the territories specified in the first schedule hereto annexed and it is expe dient to provide readier means than now exist for ascertaining the enact ments in force in such territories and the boundaries thereof, and for administering the law therein

And whereas it is expedient to declare that certain Acts are in force in a tract of land lying between the Railway Station at Satna and the eastern boundary of the Jabalpur Division .

It is hereby enacted as follows -

1 This Act may be called the Scheduled Districts Act, 1874

This Act extends in the first instance to the whole of British India Local extent. other than the territories mentioned in the first schedule hereto annexed.

and it shall come into force in each of the Scheduled Districts 2 on the issue of a notification under section 3 relating to such district In this Act the term "Scheduled Districts" means the territories Interpreta-

mentioned in the first schedule hereto annexed, and from the date tion-clause

Short fitte

^{*}For Statement of Objects and Peasons see Gazette of India 1870 Pt V 7.56 for Proceedings in Co used see the 1870 Supplement pp 1815 AF 47 and 525 ind 1872 Supplement p 377 ib d 1873 Supplement p 373 il 1874 Supplement pp 1825 and 1976 For Ise of Shedule ID start is in which the 1et has been brought into force, see Appendix A.

fixed in the resolution next hereinafter mentioned, it shall also include any other territory 1 to which the Secretary of State for India, by resolution in Council, may declare the provisions of the 33rd of Victoria,2 chapter 3, section 1, to be applicable

Repeal of enactments Antification in force in

of enactments

Scheduled

Districts

2 The enactments mentioned in the second schedule hereto annexed shall be repealed

3 The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by anotification in the Gazette of India and also in the local Gazette (if any)-

- (a) declare what enactments are actually in force in any of the Scheduled Districts, or in any part of any such district,
 - (b) declare of any enactment that it is not actually in force in any of the said districts or in any part of any such district,
 - (c) correct any mistake of fact in any notification issued under this section

Provided that a declaration once made under clause (a) or clause (b) of this section shall not be altered by any subsequent declaration other than a declaration under clause (c) of this section

Effect of notification under section

4 On the issue, under section 3, of a notification declaring what enactments are in force, or not in force in any Scheduled District the enactments so notified shall be deemed to be in force or not in force. according to the tenor of the notification, in such district, and every such notification shall be binding on all Courts of law

Power to extend enact. ments to Scheduled Districts

5 The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the Gazette of India and also in the local Gazette (if any), extend to any of the Scheduled Districts or to any part of any such district, any enactment which is in force in any part of British India at the date of such extension

Modification of enact ments in their application to Scheduled Districts

*5A. In declaring an enactment in force in a Scheduled District or part thereof under section 3 of this Act, or in extending an enactment to a Scheduled District or part thereof under section 5 of this Act, the Local Government, with the previous sanction of the Governor General in Council, may declare the operation of the enactment to be subject to such restrictions and modifications as that Government thinks fit

^{- . . .} Around x B The Statute has been applied to Tapparth Western Provinces see Gazette of India, , --. . . Chau. District 1874 1ct 1870 (33 \1ct e 3) Coll Stat , Vol I, Ed 1893 p 451

^{*}For notifications bringing the Act into force in Scheduled Districts see Appendix A to this Act infra S 51 was inserted by the Repealing and Amending Act 1891 (XII of 1891)

6 The Local Government may from time to time-

(a) appoint officers 1 to administer civil and criminal justice and of officers to superintend the settlement and collection of the public tion of their revenue, and all matters relating to rent, and otherwise to procedure conduct the administration, within the Scheduled Districts.

Appointment

- (b) regulate the procedure 2 of the officers so appointed, but not so as to restrict the operation of any enactment for the time being in force in any of the said districts.
- (c) direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such district shall be exercised or per formed 3

7 All rules heretofore prescribed by the Governor General in Council or the Local Government for the guidance of officers appointed within of existing any of the Scheduled Districts for all or any of the purposes mentioned officers in section 6 and in force at the time of the passing of this Act, shall continue to be in force unless and until the Governor General in Council or the Local Government, as the case may be, otherwise directs

Continuance rules and

All existing officers so appointed previous to the date on which this Act comes into force in such district shall be deemed to have been an pointed hereunder

1 F

(3) Burma (in repect of Upper Burma)

see Bur R M see Mad R & O

(5) United Provinces of Agra and Oudh

see North Western Provinces and Oudh List of Local Rules and Orders Ed 1894 p 152 c, U P Gazette 1906 Pt I pp 255 994

(The First Schedule -Scheduled Districts)

Settlement of questions as to boundary

8 Whenever any question arises as to the line of boundary between any of the Scheduled Districts and other territory, such officer as the Local Government or (where the said district and the other territory are not subject to the same Local Government) as the Governor General in Council from time to time appoints, may consider and determine such line of boundary.

and the order made thereon by such officer, if confirmed by the Gov ernment which appointed him, shall be conclusive in all Courts of Justice

Place of imprisonment or transportation.

iurisdiction

subjects and

over Furo nean British

saving of other laws.

9 Any person liable to be imprisoned or to be transported beyond sea under any order or sentence passed by any officer appointed under section 6 may (subject to such rules as the Governor General in Council may from time to time prescribe in this behalf) be imprisoned in such jail or transported to such place as the Local Government directs 10 Acts No III 1 of 1867,2 * * * and No XXV of 1869 are

Extension to Satna strip hereby declared to be in force in the tract of land ceded to the British of Actare Government in the year 1863 and lying between the Railway Station lating to publ c at Satna and the eastern boundary of the Jabalpur District gambling and pandhari tax 11 Nothing contained in this Act or in any notification issued erin mal

under the powers hereby conferred shall be deemed-(a) to affect the criminal jurisdiction of any Court over European British subjects or

(b) to affect any law other than laws contained in Acts or Regu lations or in rules made in exercise of powers conferred

by such Acts or Regulations

THE FIRST SCHEDULE

(See section 1)

PART I

SCHEDULED DISTRICTS, MADRAS

I -In Ganzam

- (1) The Gumsur Maliahs including Chokapad
- (2) The Surada Maliahs
- (3) The Chinna Kimedi Maliaha

F B & \ Code "So much of this sect on as related to 1ct \II of 1867 was repealed by Act \I of n omitted 1907 the worls an 1ct 1891 (\11 of 1891) See now the become Scheduled

D stricts see Appe u a :

(The Isist Schedule -Scheduled Districts)

THE FIRST SCHEDULE-continued.

PART I-concluded.

SCHEDULED DISTRICTS, MADRAS-concluded.

I.-In Ganjam-concluded.

- (4) The Pedda Kimedi Maliahs.
- (5) The Bodrguda Maliahs.
- (6) The Surangi Maliahs
- (7) The Parla Kimedi Maliahs
- (8) The Muttas of Korada and Ronaba (otherwise called Srikarma).
- [(9) The Chighatti Maliah] Rep by the Repealing and Amending Act, 1891 (AII of 1891)
- (10) The Jurada Maliah
- (11) The Jalantra Maliah (12) The Mandasa Maliah
- (13) The Budarasınghı Maliah.
- (14) The Kuttingia Maliah.

II .- In Vizagapatam.

- (1) The Jeypur Zamındarı
- (2) Golconda Hills west of the River Boderu 1
- (3) The Madugol Maliahs.
- (4) The Kasipur Zamindari
- (5) The Panchipenta Maliahs
- (6) Mondemkolla, in the Merangi Zamindari 2[(7) The Konda Muttá of Merangi]
- - (8) The Gumma and Konda Muttas of Kurpam
 - (9) The Kottam, Ram and Konda Muttas of Palkonda.

III -In the Godánan District.3

- (1) The Bhadráchalam Taluq (2) The Rakapilli Taluq
- (3) The Rampa Country.

IV -In the Indian Ocean

The Laccadive Islands, including Minicov

the

Act " (7) The Konda Mutti of Belgam "

^{*} For additional Scheduled Districts in the Godavant District, see Appendix B

(The First Schedule -Scheduled Districts)

THE FIRST SCHEDULE—continued PART II.

SCHEDULED DISTRICTS, BOMBAY.

I -The Province of Sindh 1

II —[The Panch Maháls] Rep by the Panch Maháls Laws Act, 1885 (VII of 1885), with effect from the 1st May 1885

III --- Aden 2

- IV -The villages belonging to the following Mehwassi Chiefs -
 - (1) The Parvi of Kathi
 - (2) The Parvi of Nal
 - (3) The Parvi of Singpur
 - (4) Walwi of Gaohali(5) The Wassawa of Chikhli
 - (6) The Parvi of Nawalpur

PART III

SCHEDULED DISTRICTS, BENGAL

I -The Jalpuguri and Darjeeling Districts 3

- 4 5 T 1 4 1070 77 T 4

II —The Hill Tracts of Chittagong 4 5 III —The Sonthal Parganas 4 5

IV —The Chutia Nagpur Division 46 •

V -The '[Mahal of Angul]5

1891) Born Code

1891 (that p

l tracts of Chittagong (excluding Demagni, now forming part of commissione of Assam) the Santhal Parganas ision as are not comprised within the District see Calcutta Gazette, 1899, in the Pargana Dháibhum, the Kolbán or the

(33 Vict, c 3), has been applied to these territories

"The Thoras of Rapus and Khattra which formerly formed portion of the Chutch Négpra Drunon have been transferred to the District of Bankura and ceased to be a Scheduled District on the 1st October, 1879, see the Rapur and Khattra Laws Act 1879 (YIV of 1879) Ben. Code

Scheduled Divite to the as constant, story and the Chutta Naspur Division Scheduled District see the Pornhalt Estate Act 1893 (II of 1893) \$ 5 Ben Code

There words a resubstitute for the words "Mahila of Angul and Banka" with effect from the list April, 1882b, by the Banka Laws Act, 1891 (XVV of 1891), \$ 4, Ben

The Knondmars, in Orissa (which now form part of the Angul District see the Angul District Regulation, 1894 (I of 1894), s. 2. Ben Code), are a Scheduled District, see Appendix B

(The First Schedule. - Scheduled Districts)

THE FIRST SCHEDULE -continued

PART IV.

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES

- I [The Jhans: Dirision, comprising the Districts of Jhánsi, Jalaun and Lalatpur] Rep by the North-Western Provinces and Oudh Act, 1890 (XA of 1890) s 8 (1), with effect from the 1st April, 1891
- II -The Province of Kumaon and Garhwal
- III The Tarai Parganas, comprising—Bazpur, Kashipur, Jaspúr, Rudarpur, Gadarpur, Kilpuri, Nanak Mattha and Bilheri
 - IV -In the Mirzapur District-
 - (1) The tappas of Agori Khas and South Kon in the Pargana of Agori
 - (2) The tappa of British Singrauli in the Pargana of Singrauli
 - (3) The tappas of Phulwa, Dudhi and Barha in the Pargana of Bichipar
 - (4) The portion lying to the South of the Kaimor Range
 - [V The Family Domains of the Maharaja of Benares, comprising the following parganas Bhadoh; and Kheyra (Langror in the Mirzapur District, Kasuá Raja in the Benares District] Rep by the Benares I amily Domains Act, 1881 (XIV of 1881), s 14, with effect from the 24th September 1881
 - VI —The tract of country known as Jaunear Bawar in the Dehra Dun District

PART V

SCHEDULED DISTRICTS, PULLAR

The Districts of Hazira ' Peshawar,' Robat,' Bannu,' Dera Ismail Khan,' Dera Ghazi Khan,' Labaul and Spiti

The Government of India Act 1870 (33 Vict c 3) has been applied to these term

Portions of the Districts of Hazara Bannu and Dera Ismail Khán and the Districts of Peshawar and Aobat now form the N Frontier Province see Notification No 5780, dated the 25th October, 1901, Gazette of India 1901 Pt. I P 857

(The First Schidule - Scheduled Dis ricts)

THE FIRST SCHEDULE-continued

PART VI

SCHEDULED DISTRICTS, CENTRAL PROVINCES

Chhattisgarh Zamindaris, viz -

1	Khariar	13	Matin
2	Bindra Nawagarh	14	Upror ı
3	Sahezpur	15	Kenda
4	Gandai	16	Lapha
5	Silheti	17	Chhuri
6	Barbaspur	18	Korba
7	Thal urtola	19	Chapa
8	Lohira	20	Bora Samphar
9	Gondardehi		Phuljhar
10	Fingeswar	22	Kolabira
	Pandariá	23	Rampur

Chándá Zamindáris

1	Ahırí	11	Muramgion
2	Ambagarh Chaukí	12	Panabara
3	Aundbi	13	Pılasgarlı
4	Dhanora	14	Rangi
5	Dudhmala	15	Sirsundf
6	Genarda		Sonsarı
7	Jharapapra		Chandala
8	Khutgaon		Gilgáon
9	Koracha		Pawi Mutanda
10	Kotgal	20	Pategáon

Chhindwara Jagirdaris

2 3 4	Haraí Chhater Gorakhghat Gorpáuí	7 Pachmarhi 8 Partabgarh 9 Almod 10 Sonpur
	Baktigarh	11 Bariam Pagara

C Bardágarh

12 Pendra

(The First Schedule -Scheluled Districts)

THE FIRST SCHEDULT -concluded

PART VII

The Chief Commissioner of Coorg '

PART VIII

The Chief Commissioner of the Andaman and Nicober Islands 12

PART IX

The Chief Commissionership of Ajmer and Merwara 1

PART X

The Chief Commissionership of Assam 1

PART XI

The Hill Tracts of Arakan 1

PART XII

The Pargana of Manpur

[PART \III -The Cantonment of Morar] Rep by the Repealing and Amending Act, 1891 (XII of 1891)

The Government of India Act 1870 (33 Vict c 3) has been applied to these

terntonies

"The Little Cocos Island has been transferred to the administration of the Chief Commissioner of Burms and ceased to be a S beduled D strict on the 29th Averenber 1822 are the Little Cocos and Peyarus Islands Laws Act 1832 (VIII of 1833 a revised edition of A thick as rud 'ed up to 1st October 190? has been published by the Legislative Department

(The Second Schedule - Enactments repealed)

THE SECOND SCHEDULE

(See section 2)

Number and year	Title		
XI of 1846 .	An Act for the exemption of certain Territory in the Province of Candeish and the Zillah Ahmednuggur from the operation of the General Regulations		
1 \\XVII of 1855	An Act to remove from the operation of the general Laws and Regulations certain Districts inhabited by Santhála and others, and to place the same under the superintendence of an officer to be specially appointed for that purpose		
1 ≥ of 1857 .	An Act to amend Act XXXVII of 1855		
2			
XIV of 1861	An Act to remove certain tracts of Country in the Robilkund Division from the jurisd ction of the tribunals established under the General Regulations and Acts.		
XIX of 1864	An Act to remove certain tracts of Country in the District of Mirzapore from the jurisdiction of the local Courts.		
IV of 1868	An Act to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency		
XXII of 1869	An Act to remove the Gáro Hills from the jurisdiction of the tri bonals established under the General Regulations and Acts and for other purposes.		
2			

¹ Ben. Code Acts XXXVII of 1855 and X of 1877 are still in force in the Santhál Parganas as Act XIV 11871 h a not set ben deel red in force there. 2 The entries relating to Act XXII of 1860 and to Bengal Act IV of 1863 were repealed by the Chritisch Bill treets Ragulature, 1900 (I of 1900) s 20, Ben. Code

APPENDIX 4

Scheduled Districts in which the Scheduled Districts Act 1874 has been brought into force by notification under section 3 of the Act

1	3	3	4
Pres de cy or Prov ce	Scheduled Districts	No and date of Not fica- t on	Gazette in which the Not fica
Madras	The Táluqs of Bhadráchalam and Rákap lli and the Rampá Country	728 dated 26th June 1879 D ted 20th	India 1879 Pt. I p 437 Fort St George 1879 Pt I.
	The remaining Scheduled Districts of Madras as existing on the 19th February 1889	June 1879 8° dated 19th Feb rusry 1889 83 dated 19th Feb rusry 1889	p 40° India 1889 Pt, I p 151 Fort St George 1889 Pt I p 121
	The villages in the Godavari Fistrict to which by Resolu t on dated the 4th Apr 1891 the provisions of 33 Vot cap 3 s 1 were made	11th Aug ust 1893 330 dated 11th A o	Ind a 1893 Pt I, p 516 Fort St George 1893 Pt I p 1000
Bombay	appl cable The Prov noe of Sindh	u t 1893 1471 dated 1st Octo	I da 1877 Pt I p 578 Bombay 1877 Pt I p 871
	1 Aden	ber 1877 703 dated *Oth June 18*9	Inla 1879 Pt 1 p. 434 Bombay 1879 Pt I p 6°4
	2 The Island of Per m	Soo dated 10tl Feb ruary 1886	Ind a 18% Pt I p 86 Bon bay 1886 Pt I p 105
	The vullages belong ng to the followng Meh ass Chefs —	17° dated 14th Feb ruary 1879	Ind a 18 9 It I p 100 Bombay 1879 Pt I p 115
	(1) The Párví of Káthí (2) Nál (3) Sugpúr (4) The Walw of Gaoháll. (5) The Wassúng of Ch khlí (6) The Parví of Nasalpur		J
Bengal	The Western Drags in the Jal paig in D str ct.	Dated 14th Septe uber 1875	
	The D str cts of Jalpa gi ri (ex cept the Western Drars) and Darjeeling	1664 A dated 5th N vember 1877	Ind a Fatraord nary 14th November 18
		Dated 5th November 1877	Calcutta 18"7 Pt. I p. 1623

supra 2 See Appendix B injo-

Scheduled Districts in which the Scheduled Districts Act, 1874, has been brought into force by notification under section 3 of the Act—contd.

1	2	3	4
Presidency or Province	Scheduled Distrate	No and date of Notifica- tion	Gazette in which the Notification is published.
Bengal— con/d.	The following portions of the Chutia Vázpur Division, namely —		
	the Districts of Hazári bágh, Lohárdsga ¹ and Manbhum, and Pargana Dhalbhum in the District	1664 A., dated 5th November, 1877	Ind.a, Extraordinery, 14th November, 1877
	of Singbhum	Dated 5th November, 1877	Calcutta, 1877, Pt. I, p. 1623
	theKo'han, in the Die- triet of Singbhum	1393, dated 21st O^to ber, 1881	India 1881, Pt. I, p. 504, Calcutta, 1881, Pt. IA, p. 189
	the Estate of Porabát, in the District of Singbhum.	2296 P , dated 2nd August,	India, 1895, Pt. I, p. 685 Calcutta, 1895, Pt. I, p. 765.
	2 The Mahal of Angul	1895 1664 A., dated 5th November, 1877	India, Extraordinary, 14th November, 1877.
		Dated 5th November, 1877	Calcutta, 1877, Pt. I. p. 1623
North Western Provinces	* Kumson and Garhwall	1746, dated 2nd Novem- ber, 1876	Calcutta, 1877, Pt. I, p. 1623
		566 A., dated 5th Decem ber, 1876	India, 1876, Pt. I, p. 605 N. W. P., 1876, p. 1548
	3 Tarái District	1553, dated 22nd Sep- tember, 1876.	India, 1876, Pt. I, p. 505, N. W. P., 1876, p. 1278.
	The Scheduled portion of the Mirripur District.	636, dated 30th May, 1879	India, 1879, Pt. I, p. 383 N. W. P., 1879, p. 775
	Pargana Jaunsar Báwar, in the Debrá Dun District.	632, dated 30th May, 1879	India, 1879, Pt. I, p. 351, N W P, 1879, p. 774.
Punjab .	The Scheduled Districts of the Punjab	144 J, dated 18th September, 1877	India, 1877, Pt. I, p. 562. Punjab, 1877, Pt. II, p. 1107

³ The Dutret of Lobirdays included at this time the present District of Palaman, which was separated in 1991. Lobirdays is now called the Ranch is strict, or Cal out Garette, 1893, Pt. I. P. 4!
⁴ The Schedoled Districts Act was again declared in force in Angul, and was declared in force.

in the Khondmais, by the Angul Butriet Pegulation, 1894 (1 of 1841), a. 3. Ben. Code.

* The Scheduled Dutriet, Act is I has not been expressed scharged in force in Komaton.

Garbasi or the Tarii District, but the Act has been brought into force in those places by the
issue of notifications under section 3, declaring other reastments in force.

Scheduled Districts in which the Scheduled Districts Act 1874, has been brought into force by notification under section 3 of the Act—concid

1	2	3	4
Presidency or Province	Scheduled Distrats	No and date of Notifica tion	Cazette in which the Notifica tion s published.
Central Pro vinces	The S heduled Districts of the Central Prov nees	44º dated 10th April 1878	In la 1878 Pt I p 266 Central Provinces 1678 Pt I p 83
Coorg	The Chief Commiss onership of Coorg	3°5 dated 2°nd Feb ruary 1875	India 1875 Pt I p. 95
Ar daman and Nicobar Islands.	The Chie' Commissionership of the Andaman and Nicobar Islands.	75 dated 15th March 1878	Ind a 1878 It I I 132
Aj uere ind Merwára.	Ajn ere and Merwara	169 J dated 1Jth October 1877	India 1877 Pt I p 605
1esam	The Chief Commissionership of Assum	1631 dated 3rd Nov ember 1877	India 1877 It I p 662
		Lated 7th November 1877	1ssam 1877 Pt I p 383
	fhe Lushái Hills (forn erly known as the North and South Lushái Hills) and Rut- ton Puiya s villages including Demagni in the Chitagong Hill tracts	9 l P dated 1st April 1898	India 1898 Pt II p 345 1888m 1898 Pt I p 379
Burma	The Hill tracts of Arakan in Lower Burma,	346 dated 14th tug ust 1859	India 1889 Pt. I p 450 1 Burmi 1889 Pt. I p 369
	Upper Burma (except the Shan States)	Dated 26th October 1886	Ind as 1886 Pt I p. 664 2 B irms 1886 Pt. I p 335
Central India Agency	The Pargana of Manpur	1397 I dated 18th March 1887	India 1887 Pt. I p. 157
British Balu chistan	The Ch of Commiss onership of British Baluchistan.	C3 F C. dated 8th December 188	India 1897 Pt I p 612 3

¹ The Scheduled Districts Act had previously been declared in force in the Arakan Hills by the Arakan Hill District Laws Regulation 1874 (IX of 1874) as amended by the Burma Laws Act, 1898 (VIII of 1898) Bur Code.

^{*}The Scheduled District Act has all obsended level in force in Upper Burna, fracept the Shan Stat by its Burn 1 Laws Act 1963 (1111 41989) 4 (1)1and Seb I Bur Cote As to the operation of the Scheduled Burtreta Act 1874 on the transfer of territory from Upper to Lower Burna or rice trans ere = 1 14 of the

³ The Scheduled Districts Act was again declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890) s. 3 Bal. Code

Scheduled Districts in which the Scheduled Districts Act, 1874, has been brought into force by notification under section 3 of the Act—contd

1	2	3	4
Presidency or Province	Scheduled Districts	No and date of Not fica tion	Gazette in which the Notifi cation is published
Bengal-contd	The following portions of the Chutia Nappur Division, namely — the Districts of Hazári bágh, Lohárdaga and Manbhum, sud Pargana Dhálbhum in the District of Singbhum	1664 A., dated 5th November, 1877 Dated 5th November, 1877	India, Extraordinary, 14th November, 1877 Calcutta 1877, Pt I, p 1623
	the Kolhan, in the Driniet of Singbhum the Estate of Porahat in the D strict of Singbhum Z The Mahal of Angul	1393 dated 21st Octo ber, 1891 2296 P dated 2nd August, 1895 1664 A, dated 5th November,	India, 1881, Pt I, p. 504 Calcutta 1881, Pt IA, p. 189 India, 1895, Pt I, p. 685 Calcutta 1895, Pt I, p. 765 India Extraordinary, 14th November, 1877
North Western Provinces	² Kumaon and Garhwál	1877 Dated 5th November, 1877 1746, dated 2nd Novem ber 1876 566 A dated 5th Decem ber, 1876	N W P, 1876, p 1548
	3 Tarái District The Schedulei portion of the Mizzápur District Pargans Jaunsar Ráwar, in the Dehrá Dun District	1553 dated 22nd Sep tember 1876 636 dated 30th May, 1879	India, 1876, Pt. I, p. 505 N. W. P., 1876, p. 1278 India, 1879, Pt. I, p. 383 N. W. P., 1879, p. 776 India, 1879 Pt. I, p. 381 N. W. P., 1879, p. 774
Purjab	The Scheduled Districts of the Punjab		India, 1877, Pt. I, p. 562 Punjab, 1877, Pt. II, p. 1107

¹ The Dutrict of Labitulaga included at this time the present Dutrict of Palaman, which was expected in 1891. Labitulage is now called the Ranch! I struck, or Cal unit Garette, 1899, P. I. P. 4;
⁴ The Schedaled Dutricts Act was again declared in force in Angul, and was declared in force.

, the

Scheduled Districts in which the Scheduled Districts Act, 1874, has been brought into force by notification under section 3 of the Act—concid

1	2	3	4
Presidency or Province	Scheduled Districts	No and date of Notifica tion	Gazette in which the Notifica tion is published.
Central Pro vinces.	The Scheduled Districts of the Central Provinces	449 dated 10th April 1878	India 1878 Pt I, p. 266 Central Provinces, 1878, Pt I, p. 83
Coorg	The Chief Commissionership of Coorg	305, dated 2°nd Feb ruary 1875	India 1875 Pt I, p. 95
Andaman and Nicobar Islands.	The Chie' Commissionership of the Andaman and Nicobar Islands.	75 dated 15th March 1878	India 1878 Pt I, p. 132
Ajmere and Merwara,	Ajmere and Mirwara	169 J dated 19th October, 1877	India 1877 P* I p 605
Assam	The Chief Commissionership of Assum	1651 dated 3rd Nov ember, 1877	India, 1877, Pt I, p 662
		Pated 7th November 1877	1ssam 1877 Pt L p 383
	The Lusha Hills (formerly known as the North and South Lusha Hills) and Rutton Pulyas villages including Demagni in the Chittagong Hill tracts	921 P dated 1st April, 1898	Indu, 1893 Pt II p 345 Assam 1898 Pt I p. 379
B irms	The Hill tracts of Arakan, in Lower Burma,	346 dated 14th Aug ust 1889	India 1889 Pt. I p 450 1 Burma 1889, Pt. I p 369
	Upper Burma (except the Shan States)	Dated 26th October, 1886	Hudia 1886 Pt. I p 664 2 Burma 1886, Pt. 1, p 335
Central India Agency	The Pargana of Manpur	1397 I, dated 18th March 1887	Indus, 1887, Pt I, p 157
British Balo chisten.	The Chief Commissionership of British Baluchistan.	C3 F C. dated 8th December 188"	India, 1887 Pt I p. 612 5

¹ The Scheduled Districts Act had previously been declared in force in the Aralan Hills by the Arakan Hill bittet Laws Regulation, 1874 (IX of 1874), as amended by the Burma Laws Act, 1898 (Hill of 1898), Bur Code.

² The Scheduled Districts Act has also been declared in force in Upper Barma (except the Bann Stats 14 the Barma Laws Act, 1876 (VIII (1489) ~ 4 (1)) and 18 ch. LBur Code. As to the operation of the Scheduled Districts Act, 1874 on the transfer of territory from Upper to Lower Burma or rice track, are e. 14 of the

³ The Scheduled Districts Act was again declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code

[1874: Act XIV.

(Appendix B)

APPENDIX B.

Territories which have become Scheduled Districts by virtue of the concluding portion of the third paragraph of section I of the Scheduled Districts Act, 1874, numely, those to which the Secretary of State for India has, by Resolution in Council, declared the provisions of the Government of India Act, 1870 (33 Vict, c 3), section I, to be applicable.

1	2	3	4
Presidency or Province.	Territories	Date from which the Resolution took effect.	Gazette of India in which the Resolution is published
Madras	In the Godavari District— (1) the amsettled Government vil ages in the Yernaguidem Táluk. (2) the villages of the ex Man sho I saddengs and (3) the following petity proprecions of the same of the following petity proprecions of the same of the following petity proprecions of the same of the sa		1893, Pt. I, p 205

Territories which have become Scheduled Districts by ortice of the concluding portion of the third paragraph of section I of the Scheduled Districts Aor, 1874, namely, those to which the Secretary of State for India has by Resolution in Council, declared the provisions of the Government of India Act 1870 (33 Yestoria, Chapter 3), section I, to be applicable—concil

(55 Victoria, Opapier of, Section 2, to be appreciated Concident			
1	2	3	4
Presidency or Province	Territories.	Date from which the Resolution took effect	Gazette of India in which the Resolution is published
Madras- concid	Vemmlana Auttagondi Randam Vuyalamadu gu Agrabarsapadu, Peda gu Amada and an		
Assam	The North Lushan Hills The Mekokchang subdivision of	6th Septem ber 1895 21st Oto	1895, Pt. I, p. 935 1897, Pt. I, p. 38
Bengal	the Vágá Hills District The Khondmals in Ocissa The South Lushái Hills	ber 1896 28th July, 1891 6th Septem	1891, Pt I, p 637 1895, Pt. I, p 935
Burma	Upper Burma (except the Shan States) The Ch n Hills	ber 1895 1st Warch, 1886 6th Septem	1886 Pt I, p. 311 1895, Pt. I, p. 936
British Balu el istan	The territories for the time being under the administra- tion of the Chief Commis- sioner of British Baluchistan (These territories include the tracts known as Peshin Shr ratud Nach, Kawas Harnai Sha and Thal Chottai.)	ber 1895. 1st \overn ber 1887	1887, Pt. I p. 591

¹ These Hills together with Rutton Purya a villages including Demagni in the Chittagong

[1874: Act XV.

THE LAWS LOCAL EXTENT ACT, 1874.

CONTENTS.

PREAMBLE.

SECTIONS.

- 1. Short title.
- 2. Interpretation-clause.
- 3. Local extent of Acts in first schedule.
- 4. Local extent of enactments in second schedule.
- Local extent of enactments in third schedule.
- 6. Local extent of enactments in fourth schedule.
- 7. Local extent of enactments in fifth schedule.
- 8. Savings.
- 9. [Repealed.]

SCHEDULES.

- FIRST SCHEDULE.—ENACTMENTS IN FORCE THROUGHOUT THE WHOLE OF BRITISH INDIA, EXCEPT THE SCHEDULED DISTRICTS.
- SECOND SCHEDULE —ENACTMENTS IN FORCE THROUGHOUT THE WHOLE
 OF THE TERRITORIES SUBJECT TO THE GOVERNMENT OF THE GOVERNOR OF FORT ST.
 GEORGE IN COUNCIL, EXCEPT THE SCHEDULED DISTRICTS.
- THIRD SCHEDULE.—Enactments in force throughout the whole of the territories subject to the Government of the Governor of Bombay in Council, except the Scheduled Districts.
- FOURTH SCHEDULE.—ENACTMENTS IN FORCE THROUGHOUT THE WHOLE
 OF THE TERRITORIES SUBJECT TO THE GOVERNMENT OF THE LIEUTENANT.GOVERNOR
 OF BENGAL, EXCEPT THE SCHEDULED DISTHUES.
- FIFTH SCHEDULE.—ENACTMENTS IN FORCE THROUGHOUT THE WHOLE
 OF THE TERRITORIES SUBJECT TO THE GOVERNMENT OF THE LIEUTENANT-GOVERNOR
 OF THE NORTH-WESTERN PROVINCES, EXCEPT THE SCHEDULED DISTRICTS.

SIXTH SCHEDULE

I -SCHEDULED DISTRICTS, MADRAS PART II -SCHEDULED DISTRICTS, BOMBAY.

III -SCHEDULED DISTRICTS, BENGAL

IV —SCHEDULED DISTRICTS. NORTH WESTERN PROLINCES

V -SCHEDULED DISTRICTS, PUNJAB VI -SCHEDULED DISTRICTS, CENTRAL

PROLINGES

VII -THE CHIEF COMMISSIONERSHIP OF Contra

VIII -THE CHIEF COMMISSIONERSHIP OF THE ANDAMAN AND NICOBAR ISLANDS

IX -THE CHIFF COMMISSIONERSHIP OF AJMER AND MERWARA

X -THE CHIEF COMMISSIONERSHIP OF

ASSAM

XI -THE HILL TRACTS OF ARAKAN XII -THE PARGANA OF MANPUR

.. XIII - [Renealed]

SEVENTH SCHEDULE

[Repcaled]

ACT No. XV or 1874 1

[8th December 1874]

An Act for declaring the local extent of certain Enactments, and for other purposes

WHERE AS It is expedient to declare the local extent of certain Acts passed Presmble by the Governor General of India in Council the Legislative Council of India, and the Council of the Governor General of India assembled for the purpose of making Laws and Regulations

And whereas it is also expedient to consolidate the laws relating to the local extent of certain Acts and Regulations in the Presidencies of Fort St George and Bombay, and in the I ower and the North Western Provinces of the Presidency of Fort William in Bengal

It is hereby declared and enacted as follows -

1. This Act may be called the Laws Local Extent Act 1874

Short title

plements, pp. 1885 and 1 °C.
Act Vi of 1874 (except ss. 4 7) has been declared in force in the Hill District of Arakan by the Viahan Hill District Laws Regulation, 1874 (IN of 1874) as amended by the Burma Lans Act, 1898 (XIII of 1898) Bur Code

For the Statement of Objects and Reasons are Gazetto of India 1870 Pt V p. 153 and for Proceedings in Council see ibid 1871, Supplement, pp. 1074 and 1218 and ibid 1874, Sup-

Interpretation clause 458

Local extent
of Acts in
first schedule
Local extent
of enactments
in second
schedule

2 In this Act the expression 'Scheduled Districts' means the territories mentioned in the sixth schedule hereto annexed

Γ1874: Act XV.

3 The Acts mentioned in the first schedule hereto annexed are now in force throughout the whole of British India except the Scheduled Districts

4 The enactments mentioned in the second schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Fort St George in Council, except the Scheduled Districts subject to such government

Local extent of enactments in third schedule.

Local extent of enactments in fourth schedule

Local ex tent of enactments in fifth schedule

5 The enactments mentioned in the third schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Bombav in Council, except the Scheduled Districts subject to such government.

6 The enactments mentioned in the fourth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Leutenant Governor of Bengal, except the Scheduled Districts subject to such government.

7. The enactments mentioned in the fifth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant Governor of the North-Western Provinces of the Presidency of Fort William except the Scheduled Districts subject to such government.

Savuigs.

8 Nothing herein contained shall-

(a) bar the power of the Governor General in Council or the Local Government, under any law for the time being in force, to extend to any place any Act mentioned in the said first schedule,

(b) extend any Act empowering the Local Government to extend the same or any part thereof, or affect in any manner the exercise of

such power,
(c) affect the operation of any Act or Regulation heretofore extended to or declared to be in force in any of the Scheduled Districts.

(d) revive any enactment which has been repealed either generally or with reference to some special subject;

(e) [Rep by Act VIII of 1887],

(f) [Rep by the Repealing and Amending Act 1891 (XII of 1891)],

(g) [Rep by the Guardians and Wards Act, 1890 (VIII of 1890)].

(h) [Rep by Act VIII of 1887],

(i) [Rep by the Repealing and Amending Act, 1894 (IV of 1894)],

(j) extend to any of the Towns of Calcutta, Madras and Bombay any law not now in force therein,

I(j)) extend to Pargana Bhadohi or Pargana Kera Vangror in the Mirzápur District, or to Pargana Kaswa Raja in the Benares District, and Law not now in force therein. 1

^{1 (}L (n) was inserted by the Benares Fam is Domains Act 1981 VII of 1881), a 15, U P Code

(First Schedule —Enactments in force throughout the whole of British India, except the Scheduled Districts)

- (1) affect the operation of any enactment not mentioned in any of the schedules hereto anneved
- 9 [Enactments repealed] Rep by the Repealing Act, 1876 (XII of 1876)

FIRST SCHEDULE I

(See section 3)

ACTS OF THE SUPREME COUNCIL

Year and Number	Subject
2 1836 XXVI (1837, IV	Governor Ceneral & Camp P Ince Power to acquire land
1838 XXV 1839, XXIX	Wills executed before the 1st January 1866 Dower, when marriage was contracted before 1st January 1866
" 777	Inheritance where descent took place before lat January 1866 Interest
1841, XXXII	Registration of ships Curators in cases of successions
1843 \\ 1847 \\ 1850,	Slavery Copyright Coasting Trade Navigation Laws
. ,	

1 Act X\$ of 1874, having been repealed so far as it relates to the following enactments by the Acts noted against each the references to those enactments have been omitted from this schedule

Enac	etments omitted	P	ep alng Acts.
Act	VI of 1840	Act	XXVI of 1881
•	XI of 1841		VIII of 1887
	VIII of 1841		XI of 1878
	IX of 1842		XII of 1891
·	XII of 1842	,	T7777 1 100m
,, Z	XXIII of 1852	} ,	7391 le 1117
,,	XVIII of 1854		TII of 1891
ï	III of 1859	-	VIII of 1887
,,	VIII of 1859	· .	
ï	XIV of 1859 s 15	٤.	XII of 1891
	XV of 1859	, ·	
	XXVII of 1860		VII of 1889
,	IX of 1861		VIII of 1890
	XXIII of 1861	,	XII of 1891
	VI of 1863	<i>j</i> "	
	XI of 1865		I\ of 1837
	X of 1866	"	TII of 1891
	₹ of 180°	**	LX of 1887
	Z of 1868	,	VII of 1891

² Act \\I of 1830 was repe to by the Peresting and Amending Act, 1891 (XII of 1891) 2 Coneral Acts Vol 1

١

(First Schedule.—Enactments in force throughout the whole of British India, except the Scheduled Districts)

FIRST SCHEDULE-continued

ACTS OF THE SUPREME COUNCIL-continued

	Year	and	Num	ber		Subject
1852, 1853, 1854, 1855, 1855, 1856, 1857, 1859,	XXX XXX XXX XXX XXX XXX XXX XXX XXX XX				 * :	Default of Public Accountants, Protective of Judicial Officers Binding of Apprentices. Non forfeiture of rights by loss of Caste Enquiries and the behaviour of Public Ser Naturalization of Allens. Burdens on land. Burdens on land. Barring entails Conveyances by married women. Penal servitude Interest. Bills of lading. Burdens on Burdens of Burdens Marriage of Hindu Wildows. Offences egamat the State Poriesture by Mutineers. States of Linatics not subject to jurisdiction of Supreme Courts. Lunatic Asviums. Excise Duty payable on Spirits used in Arts and Manufactures, Caims to Waste lande Garette of India, Poreigners Common Carriers Garing Diverce among Parsis Interests Succession among Parsis

¹ Act XII of 1850, see General Acts, Vol. I, is repealed locally in Assam by the Assam Land Revenue Regulation, 1880 [I of 1880] E. B. and A Code
2 General Acts, Vol. 1

² Repealed by the Transfer of Property 1ct, 1900 (11 of 1900), a. 5, General Acts, 1 of V.

(Second Schedule — Enactments in force throughout the whole of the territories subject to the government of the Governor of Fort St George in Council, except the Scheduled Districts)

FIRST SCHEDULE--concluded

ACTS OF THE SUPREME COUNCIL-concluded

	Year and Number	Subject
1 { 1866, 2 1867 3 { 1869, 1870,	XXI XXV XXV XXI XXI XXI	Dissolution of Marriages of Native Converts Trustees and Mortgagees' Powers Printing Presses, etc Fydence of Prisoners Quarantine

SECOND SCHEDULE 4

(See section 4)

(a) -Madras Regulations

	Year and Number	Subject.
5 { 1802,	HI (s 1, part of s 16 only) XIX (s 2) XXV XXVI(s 1, 2 and 3 only) XXXX I	Procedure of Civil Courts, Covenanted Civil Servants forbidden to lend. Settlement of land revenue Regustration of malguzarı land Karnama Board of Revenue Conducted Collectors etc

¹ Act XV of 1874 so far as it relates to Act V of 1866, as 11, 12 and 13, is repealed by Act XXII-07 1831 So much of Act V of 1896 as is now in force is printed in the General Acts Vol 1

² General Acts, Vol I

S For Act XV of 1869, see supra Act I of 1870 was repealed by Act III of 1900

4 Act XV of 1874 having been repealed, so far as it rel tes to the following enactments by the Acts noted against each, the references to those enactments have been omitted from this schedule —

	F	nactmer	ıts omi	tted	•		Repealing Acta
Mad	Pe~	III of	1802	s 11		Ac	t XII of 1891
**		٦,	1802	s 33			XI of 19 1
		VIII,	1802				Do
**	,	1,	1805			٦	
		11	1807			1	
		11	1816			}	XII of 1891
**		1.4	1816	43		1	
	,	λIV ,	1816			j	
**	**	Ι.	1819			5	
	,		1821,	8 4		(XII of 1876
,		m,	1831			("	20101100
		/ II .	1832			,	
		V.,	1832				VI of 1878
_		XIV.	1832				C281 to 111Z

6 Mal Code 6 Madras Pegulation XXIX of 1802 is repealed locally by Madras Act II of 1894 The Regulation is proceed in the Madras Code Ed 1888, p. 12 (Second Schedule — Enactments in force throughout the whole of the territories subject to the government of the Governor of Fort St George in Council, except the Scheduled Districts.)

SECOND SCHEDULE—continued (a) —MADRAS REGULATIONS—concluded

		Year and Number		Subject
1	1804, 1806, 1808, 1816, 1816,	V II ² [(s 7, cl second)] VII V XI		Court of Wards Collectors and Karnams Martial Law Village Pancháyats Sections 8 9, 10—Heads of villages Section 11, cl 1—Stolen property Section 13— Discovery of corpses Section 14—Registra property Section 14—Registra of persons confined by beads of villages, and Section 47—Magistrates charged with
-	,,	XII 4		maintenance of peace Reference of claims regarding land and pro- duce to Village and District Pancháyata.
- 1	1817,	VII		Maintenance of Bridges etc Fscheats.
- 1	,	VIII (s 9 only)		Sale for arrears of revenue of estate belong
3	1819, 1822,	II IV		ing to Native Officer or Soldier State Prisoners. Explanation of Madras Regulation XXV, 1802
- 1		VII (cl 1 of a 3 only)		Native Officers in Revenue and other Public
	1823, 1828,	IX III VII	}	Departments Embezzlement by public servants and malver sation in revenue matters Powers of Subordinate and Assistant Collec- tors
- 1	1829,	v		Hindu Wills and Estates.
- 1	1830,	1		Probabition of Widow burning
- {	1831,	V (s. 7, cl. 2 only)		Liability of Ministerial Officers for reception of improperly stamped document
`	•	VI 5		Hereditary Village Offices
6		x		Prohibition of Sale of Estates of Minors for
3	1832,	щ		Arrears of Revenue Lin station for Si its against orders of Pevenue Authorities under Madras Pegulation VII of 1828.

¹ Act XV of 1874 so far as it relates to the portions of Madras Regulation V of 1804 which were repealed by the Guardan and the Regulation was

² Parts of sa. 1 and 7 = only the second clause of s

^{1876 (}VII of 1876)

3 Printed Madras Code

⁴ Madras Regulation XII of 1816 has been repealed by Madras Act IV of 1807 (the Madras Surrey and Boundaries Acts of as at a splice to case of claims to hinds or crops the validity of which claims may depend upon the determination of an uncertain and disputed boundary or land mark

⁸ Reyeated by Madras Act III of 1805 (Madras Hereditary Vallage Offices Act) Mad Code Act X to 1574, so far sai tenties to Madras Regulation X of 1874, s I a repeated by the Guardians and Wards Act, 1800 (VIII of 1800) So much of the Regulation as is now in force is printed in the Madras Code.

(Second Schedule - Enactments in force throughout the whole of the territories subject to the government of the Governor of Fort St. George in Council, except the Scheduled Districts \

SECOND SCHEDULE—concluded

(b) -ACTS OF THE SUPREME COUNCIL RELATING TO THE MADRAS PRESIDENCY 1

	Year and Number	Subje t
2 1837 1839 1840 4 8 1846 4 2 1849 3 1855 5 1857 2 1858 1859 1860	XXXVI VIII VIII VI I IX XX XXI XXII VIII VI	Criminal Jaristletium of Collectors. Tah ildars. Awar li of lancháyats Dutres Pleude s Ha b u s Com insisoners of Revenue Li

1 Act XV of 1874 having been repealed so far as it relates to the following enactments by the Acts noted against each the reference to those enactments have been om tied from this sched 1110 -

Enactments om tted	Repealing Acts	
Act XII of 1838		Act VI of 1878
XVII of 1840 VII of 1859	•	XII of 1891
X of 1850 s 10		XI of 1901
XIV of 1855		VIII of 1887
XIV of 1858		VIII of 1890
XI of 1809		XII of 1891
XXIV of 1869		XX 111 of 1877

2 Repealed by Mad Act I of 190° (Madras Court of Wards Act) 2 Repealed by Mad Act 1 of 1897 (Macras Court of Warns Act)

3 As to the repeal of Act 2 of 1847 and XX of 1853 in the Madras Presidency set the Legal

Pract I nores Act 1879 (AVIII of 1879) as 1 and 4° printed General Acts Vol. III The

Act IX of 1846 was repealed by Mad Act I of 1893 (Repealing obsolete enactments)

5 Act VIII of 1857 was repealed by the Prisons A t 1894 (IX of 1894)

(Third Schedule - Enactments in force throughout the whole of the territories subject to the Governor of Bombay in Council, except the Scheduled Districts)

THIRD SCHEDULE I

(See section 5)

(a) -BOMBAY REGULATIONS

		Year and Number	Subject
1	1827,	11	Section 21 (caste questions), sections 47 to 54 (inclusive) and section 56 (pleaders)
	,,	IV	Section 262 (law applicable to suits), section 69,3 clauses second and third 8 (attachment
1	•	,	and distraint of crops) Preamble section 9 (acknowledgments of debt) section 11 (interest) section 15
2	:	VIII All	
			• • • • •
	,	/III	robberies) Section 34 chiuse third (letter substituted for summons)
ا.		XXII	Sections 40 41, 42, 43 (passage of troops) State Prisoners.
••	1830	***	Section I (Revenue Commissioners) section 2, clauses 1, 2, 3 (Collectors and Sub Collec- tors)
z	".	XIII	Civil jurisdiction of Jagurdars
3	1833 1833	II 7A	Village Patels. Realization of Revenue Hereditary Officers

I Act XI of 1874 having been repealed, so far as it relates to the following enactments, by the Acts noted against each the references to those enactments have been emitted from this schedule --

Enactments omitted.	Repealing Acts
B m Reg XII of 1827, preamble	} Act AII of 1891
" " XXI of 1827 " " XXI of 1827, ss 1 16 46, 54 73)
XXII of 1827, as 18 20, 45-47	XIII of 1889

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³ Bom Reg IV of 1827, s 69, and Bom Regs V of 1830 AV of 1831, If of 1832 and V of 1833 are repealed locally by the Bombay Land revenue C.de, 1879 (Bom. Act V of 187.) Bom Code

(Third Schedule — Enactments in force throughout the whole of the territories subject to the government of the Governor of Bombay in Council, except the Scheduled Districts.

THIRD SCHEDULE-concluded

(b) -Acts of the Supreme Council relating to the Bombay Presidency 1

	Year and Number	Subject		
2 1838 3 1838 2 1839 1840 4 1842 2 1844 5 1846 4 5 1853	XVI XVIII XIX XX XX XV XIII XVII XIX III XX	Judicity Sureties. Coasting Vessels Revenue Agents of Foreign Sovere gns Revenue Revenue Commiss oners Abolit on of Town Duties, Pleaders Sections 1 5 and 6—Boundary Marks Pleader		

¹ Act XV of 1874 having been repealed so far as it relates to the following enactments by the Acts noted against each the references to those enactments have been omitted from this schedule —

> by the Bombay Land Presidency see the Legal III. The Acts of 1846

3

(Fourth Schedule—Enactments in force throughout the whole of the territories subject to the government of the Lieutenant-Governor of Bengal, except the Scheduled Districts)

FOURTH SCHEDULE'

(See section 6)

(a) -BENGAL REGULATIONS (LOWER PROVINCES)

	Year and Number	Subject
	/1793, I " III " VIII " XI	Perpetual Settlement Collection of Land revenue Rules for Decennial Settlement Native laws of inheritance to Revenue paying land, Title to lands exempt from Revenue.
2	" xxxvii	Title to lands exempt from Revenue under bad hahi grants Section 1-Preamble Section 2-Prohibition of loans by Covenanted Servants
	1794, 111	Sections 13, 16, 17, 18 19 and 20-Arrears of Revenue.
	1799, V 1800, VIII 1801, I 1804, X	Wills and Intestaces of Natives Pargana Regarder of Lards Arrears of Revenue Division of Joint Estates Punishment by Court-martial of certain State offences.
	1806, XI 1810, XIX	Passage of Troops Maintenance of Bridges, etc Eschents

¹ Act XV of 1874 having been repealed, so far as it relates to the following ensements by the Acts noted against each, the references to those enactments have been omitted from this schedule—

E	nactments omitted.	Repealing Acts		
Ben. Reg	XV of 1797 . Lot 1798 . XVII of 1806, ss. 7 & 8 XX of 1810 XX of 1811 XIX of 1814 V of 1817 . XX of 1817 ss. 28 & VI of 1819 .	. } ,	XII of 1891 XII of 1876 XII of 1876 XII of 1889 XIII of 1889 XII of 1889 XII of 1878 XII of 1882 XII of 1882 XII of 1876	

(Fourth Schedule — Luctiments in force throughout the whole of the territories subject to the government of the Lieutenant Governor of Bengal, except the Scheduled Districts?

FOURTH SCHEDULE_continued

(a) -Bengal Regulations (Lower Provinces) -- concluded

	Year and Yumber	Subject
1812	V V	Collection of I and revenue
1817,	χί	Pemoral of Foreign Imperats Section 29—Criminal process in Salt and Opium Departments Section 22, clauses
	1	1 2 and 5- Building forts, Collecting scroys and stores Frieroaching on roads
[1818	III	State Prisoners
1819	II	Resun ption of Revenue-free lands
1971	11.	Powers of Collectors at d Magistrates
1822	III	Boards of Landrevenue
	Χi	Section 36—Khás management of purelases by Government Section S-non liability of Covernment for errors of Courts
1823,	VI	Indigo Contracts
,	VII	Probibition of loans to Covenanted Civil
1 1527	٧I	Passage of Proops
1,	Jλ	Defucting malguzara
;,	XI	Alluvion and Liluvi i
1 '	XIII	Settlement of resum d I akhirai jand
,,,	/11/	Authority to confirm I akhiráj tenures Native grants
1827	111	Section 5-Evidence
1 ,,	١	Management of Estates under attachment
18_9,	Ш	Appeals from decisions of Pevenia Authori-
"	1/	Section 1 and section 2 clause i—Tipe during which Collectors are to be considered engaged in making settlements
1829,	I	Commissioners of Revenue and Board of Revenue
ļ	11/7	Malos burning
(1830	v	Sections I and 5—Indigo Contracts

¹ Ben Code

(Fourth Scledule—Enactments in force throughout the whole of the territories subject to the government of the Lieutenant Governor of Bengal excent the Scheduled Districts.

FOURTH SCHEDULE-concluded

(b) -Acts of the Supreme Council relating to the Lower Provinces 1

\car	an l Number	Subject
1836 X X X X X X X X X		Ind go Contracts Creating Jits. Section "~\o Interest on arreurs of Lard revenue Assessment of new lands Land revenue Board of Revenue Embrunkenst Cry to Court A nins Settlement of All won Sales for Arrears of Revenue.

1 Act XV of 1874 having been repealed so far as it relates to the following enactments by the Acts noted against each the references to those enactments have been omitted from this chedule —

Enac	tments om tted.	Repeating Acts		
Act	XX of 1836 XI of 1838	Act XII of 1891		
	X1 X of 1853 * °6	I of 1903		
	XX of 1856 XXI of 1856	1681 to 113.		
	XL of 1858	VIII of 1890		
	XXIII of 1860	1681 fo [17]		

^{*} Ben Code 5 \ XXII of 18 \(\text{as b} \) n repealed locally n Bengal by the B ngal Fn bankn ents Act, 15 7 (Beng 1 \) to \ \ \ 1873) \ 5 \(\text{Ren Code} \)

(Fifth Schedule —Enactments in force throughout the whole of the territories subject to the Lieutenant Governor of the North Western Provinces, except the Scheduled Districts!

FIFTH SCHEDULE

(See section 7)

(a) -- Bengal Regulations (North Western Provinces)

Year and Number	Subject.
1707 \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	Section 1—preamble Section 2—p olibition of leans by Covenanted Servanta, Units a d 4d n n straton to Autres P nishment by Courts martial of certain State Office es Passage of Fronces Personal of Foreign Em grants State Prisoners Section 38—No initiality of Government for The Court of the Section Sect
18°0 VI 18 VI 19 9 SVII 1830 V 1831 VI	Serva ta Per ago of Troops Alluvion and 1 refliction Sect on a - Evidence Manage, eat of Listete under 1tt chineat. The Direction of Direction of Contracts Section 1 2 0 6 - 1 of ce powers of Tabsfildars
(1833 17	Deputy Collectors.

 $^1\,\mathrm{Act}$ Vi of 1871 law n_p been repealed so far as it relates to the folloging enactments. Ly the Acts noted against each the references to those enactments have been omitted from this chedule —

Enactments on ited	Repealing Acts		
Be Reg	8 {Act XII of 1891.		
XX of 1810	ZIII of 1899		
V of 1917 VI of 1819	1691 to 11X		
XX of 15°5	X of 1882.		
" VI of 1831 s. 6 VI of 1831 ss 4 &	8 { , XII of 1591		
I of 1833	. NIII of 1875		

2 D P Code

[1874: Act XV.

(Fifth Schedule -Enactments in force throughout the whole of the territories subject to the Lieutenant-Governor of the North-Western Provinces, except the Scheduled Districts.)

FIFTH SCHEDULE-concluded.

(b) -- ACTS OF THE SUPREME COUNCIL RELATING TO THE NORTH-WESTERN PROVINCES 1

Year and Number						Subject	
2 { 1836, 2 { 1851, 1856, 3 2 1857	X XVI XX XX XIII	:	:	:	:	:	Indigo Contracts. Police Chil Court Amins Chaukidars Optum

1 Act XV of 1874 having been repealed, so far as it relates to the following enactments by the Acts noted against each, the references to those enactments have been omitted from this schedule

Enactments omitted. Repealing Acts. Act XXI of 1836 " X1X of 1853 s 26 . XL of 1858

² U. P. Code 3 U. P. Code, as to the repeal of this Act in municipalities, see Act XV of 1883, s. 17, repealed by the North-Western Provinces and Oudh Act I of 1900

(Sixth Schedule .-- Scheduled Districts.)

SIXTH SCHEDULE.

(See sections 2, 3, 4 5, 6 and 7.)

PART I.

SCHEDULED DISTRICTS, MADRAS.

I .- In Ganjám,

- (1) The Gumsur Mahahs, including Chokapad
- (2) The Surada Mahahs
- (3) The Chinna Kimedi Maliahs.
- (4) The Pedda Kimedi Maliahs
- (5) The Bodaguda Mahahs.
- (6) The Suranji Maliahs
- (7) The Parla Kimedi Maliahs
- (8) The Muttas of Korada and Ronaba (otherwise called Srikarma)
- [(9) The Chighatti Mahah.] Rep by the Repealing and Amending Act, 1891 (XII of 1891)
- (10) The Juradá Mahah
- (11) The Jalantra Mahah
- (12) The Mandasa Maliah.
- (13) The Budarashinghi Mahah
- (14) The Kuttingia Mahah

II -In Vizagapatam

- (1) The Jeypur Zamindári
- (2) Golconda Hills, west of the River Boderu 1
- (3) The Madugol Mahahs
- (4) The Kasipur Zamindári
 - (5) The Panchipenta Maliahs
- (6) Mondemkolla, in the Merangi Zamindári
 - ²[(7) The Konda Muttá of Merangi]
 - (8) The Gumma and Konda Muttas of Kurpam.
- (9) The Kettam, Ram and Konda Muttas of Palkonda.

¹ The Ducharts and Guddern Muttkain the Golconds Hills have been transferred from the Yarsgapitam to the Goldwan Datnet. See Fort St. George Gazette, 1831, Pt. I., p. 336. Octaon rillages and estates in the Goldwar Datriet have become Scheduled Datnets for the purpose of the Scheduled Datnets Act, 1874, see Appendix B to that Act, printed, series; but they are not "scheduled datricts" within the meaning of the Laws Local Estent Act, 1874.

² This clause was substituted for the original clause (7) by the Repealing and Amending Act, 1991 (XII of 1891), General Acts, Vol. IV. The original clause ran—"The Konda Muttá of Belgám"

(Sixth Schedule -Scheduled Districts)

CITION CONTRACT . . .

SIXTH SCHEDULE—continued

PART I -concluded.

SCHEDULED DISTRICTS, MADRAS-concluded

III -In the Godávari District 1

- (1) The Bhadrachalam Táluq
- (2) The Rakapıllı Táluq
- (3) The Rampá Country

IV -In the Indian Ocean

The Luccadive Islands, including Minicoy

PART II

SCHEDULED DISRICTS BOMBAY

I -The Province of Sindh

II -[The Panch Mahals] Rep by the Panch Mahals Laus Act, 1885 (VII of 1885) with effect from the 1st May 1895.

III -Aden 2

- IV —The villages belonging to the following Mehwassi Chiefs
 - (1) The Puvi of Káthi
 - (2) The Parvi of Nal (3) The Parvi of Singpur
 - (4) Walwa of Gaohálla
 - (5) The Wassawa of Chil hli
 - (6) The Parvi of Nawalpur

PART III.

SCHEDULED DISTRICTS BENGAL.

1 -The Julphigum and Darjeeling Districts 3

II -The Hill Fracts of Chittagong

¹ See first footnote on preced ng page.

(Sixth Schedule -- Scheduled Districts)

SIXTH SCHEDULE-continued

PART III-concluded

SCHEDULED DISTRICTS, BENGAL-concluded.

III — The Santhal Parganas
 IV — The Chutia Nagpur Division 1
 V — The Mahals of Angul and Banki 2

PART IV

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.

- I.—[The Jháns: Division comprising the Districts of Jhánsi, Jalaun and Lalatpur] Rep by the North Western Provinces and Oudh Act, 1890 (XX of 1890), section 8 (1), with effect from the 1st April 1891
- II -The Province of Kumáon and Garhwál
- III The Tarái Parganas, comprising—Búzpúr, Kashípur, Jaspúr, Rudar-púr, Gadarpur, Kilpuri, Nanak-Matthá and Bilheri
- IV —In the Mirzipur District—
 (I) The tappas of Agori Khás and South Kon in the Pargana of Agori
 - (2) The tappa of British Singrauli in the Pargana of Singrauli
 - (3) The tappás of Phulwá, Dudhi and Barhá in the Pargana of Bichipár.
 (4) The portion lying to the South of the Kaimor Runge
 - [V.—The family Domains of the Maharajá of Benares, comprising the following parganas —Bhadohi and Kheyra Mangror in the Miriápur District, Kasica Rajá in the Benares District] Rep by the Benares Family Domains Act, ISSI (XIV of 1881), s 14, with effect from the 24th September 1881
- VI —The tract of country known as Jaunsar Báwar in the Dehrá Dún District
- ¹ The Thanas of Laupur and Khattra, which formerly formed portion of the Chuth Aiggur Derivon havo been transferred to the District of Bankura and ceased to be a Scheduled District on the 1st October 1879 See the Raipur and Khattra Laws Act, 1879 (XIX of 1879), Ben. Code
- The ESTATE OF PORABÉT now forms part of the Chutis Niggur Division Scheduled District for the purposes of the Scheduled Districts Act, 1874, see the Porabét Estate Act,

trict Regulation, 1894 (I of 1 purposes of the Scheduled Dis ed, supra; but they are not "Act, 1874.

(Sixth Schedule -- Scheduled Districts)

SIXTH SCHEDULE -- continued

PART V

SCHEDULED DISTRICTS, PUNJAB

The Districts of 1 Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khún Dera Gházı Khán, Lahaul and Spiti

PART VI

13 Mátín.

14 Uprorá 15 Kendá

16 Láphá 17 Chhúrí

SCHEDULED DISTRICTS, CENTRAL PROVINCES

Chattisgarh Zamindáris

•	Continue	1 1 1 1	Chhúrí
5	Silbeti	1 17	
6	Barbaspur	18	
7	Thák irtolá.	19	
8	Lohárá.	20	
b	Gondardehí.	21	
1ō	Fingeswar	22	
īĭ	Pándariá	23	. Rámpur
12	Pendrá	ſ	
		Chanda Zam	ındárıs
	Ahiri	1 11	Muramgáon
å	Ambágarh Chauki.	12	
3		13	

20 Pate Aon Chhinduara Jagirdaris

1	HaraL
2.	Chhâter
3	Gorakhghat.
í	Gorpáni.
ō	Baktagarh
	Transport.

1 Khariár

4 Gandar

Dhanorá

5 Dudhmálá.

Gewards

7 Jhárápápra. 8 Khutgáon 9 Koráchá.

10 Kotgat

b 1õ n 12

2 Bindra Nawagurh 3 Sahezpur

8	Partábgarh
9	Almod
10	Conjur Raziem Ponés
11	Bariam Posts

Rángi

Sirsundi

Sonsari.

Chéndálá

I ani Mutanda

6 Bardagarh.

PART VII

The Chief Commissionership of Coor,

(Sixth Schedule.-Scheduled Districts.)

SIXTH SCHEDULE—concluded

PART VIII

The Chief Commissionership of the Andaman and Nicobar Islands.1

PART IX.

The Chief Commissionership of Aimere and Merwara.

PART X.

The Chief Commissionership of Assam.2

PART XI.

The Hill Tracts of Arakan 3

PART XII.

The Pargana of Manpur.

PART XIII. [The Cantonment of Morar.] Rep by the Repealing and Amending Act, 1891 (XII of 1891).

3 UPFIR BIRMS (with the exception of the Shan States) has become a Scheduled District for the purposes of the Scheduled District Act, 1874 (XIV of 1874), ac Appendix B to that Act, supra but it is not a "scheduled district" within the meaning of the Laws Local Extent Act, 1874.

Under the operation of the Burma Laws Act, 1898 (XIII of 1898), a. 14. But Code, portions of Lower Burma may become Scheduled Districts for the purposes of the Scheduled Districts Act, 1874 (XIV of 1974).

The Chief Commissionership of British Baltichista has become a Scheduled District for the purposes of the Scheduled Districts Act, 1874, see Appendix B to that Act, sayrer i but it is not a "Scheduled district" within the meaning of the Laws Local Extent Act, 1874.

ACT No V of 1875.1

[9th February 1875.]

An Act to remove doubts as to the rights and liabilities of certain Native Soldiers

Preamble.

Validation of

certain Na tive soldiers

Whereas doubts have arisen as to the rights and liabilities of certain Native Soldiers who have been enrolled without having been attested, and it is expedient to remove such doubts; It is hereby enacted as follows .--

1. Every person who has for the space of six months been in the receipt enlistment of of military pay and been borne on the rolls of any Regiment, Corps, Depôt, Ordnance Establishment, or Department of Her Majesty's Indian Army (of which the last pay statement, if produced, shall be evidence), shall be deemed to have been duly enlisted, enrolled and attested, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enlistment, enrolment or attestation, or on any other grounds save such as may be recognised by the orders and customs of the service

> 1 Short title, The Unattested Sepoys Act, 1875 See the Short Titles A.t. 1897 (XIV of 1897) General Acts Vol. IV n 17 ... no 1

> > 715 sce

41 .

AL HES DEED GOLDHER IN AUTO IN

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s 4 (t) and Sch I Bur Code .

British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s 3, Bal. Code .

the Arakan Hill Districts by the Arakan Hill District Laws Regulation, 1874 (IX of 1874) s 3 as amended by the Burma Laws Act, 1898 (XIII of 1898) Sch III, Pt II, Bur

It has been applied to the Shan States by the Shan States Laws and Criminal Justice Order, 1895, see Burma Gazette, 1895, Pt I, p 262

ACT No IX of 1875.1

[2nd March 1875,]

An Act to amend the Law respecting the age of majority.

WHEREAS, in the case of persons domiciled in British India, it is expedient Preamble to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists, It is hereby enacted as follows .-

1. This Act may be called the Indian Majority Act, 1875

It extends to the whole of British India, and, so far as regards subjects of Localextent. Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty,

and it shall come into force and have effect only on the expiration of three Commence months from the passing thereof

2. Nothing herein contained shall affect-

operation. Savings.

- (a) the capacity of any person to act in the following matters (namely) .marriage, dower, divorce and adoption:
- (b) the religion or religious rites and usages of any class of Her Majesty's subjects in India, or
- (c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him
- 3. Subject as aforesaid, [every minor of whose person or property or both Age of major

a guardian, other than a guardian for a suit within the meaning of Chapter persons domi XXXI of the Code of Civil Procedure, has been or shall be appointed or cited in Brit-TT 41 04 ... 4 501 4 3D . 0 44 5T 3 1074 D4 T7 - 149 4.

Short title

Abi at aga shu bishbuum, anu Pargana Dháibhum and the Kolhán in the District of Singbhum. [The Lohardaga District included at this time the present District of Palaman which was separated in 1894 Lobárdaga 18 now called the Ranchi District. Calcutts Gazette, 1899, Pt., I, p. 44] The North Western Provinces

Pt. i. th --

See Gazette of India, 1881, Pt 1 p. 504

Ditto 1976 Pt. I p 505 It has been extended, by notification under s. 5 of the same Act to British Baluchistan, or Gazette of India, 1897, Pt. II. p 60 70 L. L

ACT No XVIII or 18751

[13th October 1875]

An Act for the improvement of Law Reports

WHEREAS It is expedient to diminish the multitude and expense of the Law Reports published in British India, and to improve their quality, And whereas, with a view to furthering these objects, the Governor General in Council proposes to authorize the publication of reports of cases decided by the High Courts of Judicature established under the twenty-fourth and twentyfifth of Victoria, chapter 104. 2It is hereby enacted as follows —

Short title.

Local extent.

Commence

ment

- 1. This Act may be called the Indian Law Reports Act, 1875
- It extends to the whole of British India .

and it shall come into force on such day as the Governor General in Council notifies in this behalf in the Gazette of India³

- 2 [Repeal of Act II of 1875] Rep by the Repealing Act, 1876 (XII of 1876)
- Authority given only to authorized reports

 3 No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it the report of any case decided by any of the said High Courts on or after the said day, other than a report published under the authority of the Governor General in Council

Authority of judicial decisions

4 Nothing herein contained shall be construed to give to any judicial decision any further or other authority than it would have had if this Act had not been passed

¹For the Statement of Objects and Reasons see Gazette of Indus 1875 Pt V p 139 for Proceedings in Council see 161d Fxtra S pplement dated 31st July 1875 p 5 and 181d Extra ordinary dated 25th October 1875 p 1

² The Indian High Courts Act printed to 5 5 2 3 Came into force on the 1st January 1876 see Gazette of India 1875, Pt I p 589

ACT No VII or 18761

[21st March 1876]

An Act to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal and to amend the same Act.

Whereas it is expedient to extend 2Act No XXVII of 1871 (for the Regis- Preamble tration of Criminal Tribes and Eunichs) to the Lower Provinces of Bengal and to amend the same Act in manner hereinafter appearing. It is hereby enacted as follows -

1. Section 1 of the said Act shall be read as if, after the words "Lieuten. Extension of ant-Governors of " the following word were inserted (namely), "Bengal" Act XXVII

Lower Pro-

2. Section 18 of the said Act shall be read as if in the second clause, Amendment after the words "persons reside," the following words were inserted (namely) of section 18, Act XXVII " or the agents of such landowners or occupiers "

of 1871

Section 21 of the said Act shall be read as if in the first clause. Amendment after the words "persons reside," the following words were inserted (namely), Act XXVII "or of the agent of any such owner or occupier."

of 1871

and as if in the fourth clause, after the words "occupier of land." the following words were inserted (namely), "or of the agent of such owner or occupier "

And section 22 of the same Act shall be read as if, after the words Amendment of section 22, "occupier of land," the following words were inserted (namely), "or the Act XXVII agent of such owner or occupier "

ACT No XVIII or 18751

[13th October 1875]

An Act for the improvement of Law Reports

WHEREAS it is expedient to diminish the multitude and expense of the Law Reports published in British India, and to improve their quality, And whereas, with a view to furthering these objects, the Covernor General in Council proposes to authorize the publication of reports of cases decided by the High Courts of Judicature established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, 2ft is hereby enacted as follows —

Short title Local extent. Commence ment 1. This Act may be called the Indian Law Reports Act, 1875

It extends to the whole of British India,

and it shall come into force on such day as the Governor General in Council notifies in this behalf in the Gazette of India³

2. [Repeal of Act II of 1875] Rep by the Repealing Act, 1876 (XII of 1876)

Authority given only to authorized reports

3. No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it, the report of any case decided by any of the said High Courts on or after the said day, other than a report published under the authority of the Governor General in Council

Authority of judicial decisions 4. Nothing herein contained shall be construed to give to any judicial decision any further or other authority than it would have had if this Act had not been passed

(X

1881, Pt I p 504

² The Indian High Courts Act printed Coll Stat, Vol L. 3 Came into force on the 1st January 1876 see Gazette of India, 1875, Pt I, p 589

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[21st March 1876]

An Act to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal and to amend the same Act.

Whereas it is expedient to extend 2Act No XXVII of 1871 (for the Regis- Presmble. tration of Criminal Tribes and Eunicks) to the Lower Provinces of Bengal and to amend the same Act in manner hereinafter appearing. It is hereby enacted as follows -

1. Section 1 of the said Act shall be read as if, after the words "Lieuten. Extension of ant-Governors of," the following word were inserted (namely), "Bengal" Act XXVII

section 1, to Lower Pro-

2. Section 18 of the said Act shall be read as if in the second clause. Amendment after the words " persons reside," the following words were inserted (namely) of section 18. " or the agents of such landowners or occupiers "

Act XXVII

Section 21 of the said Act shall be read as if in the first clause, Amendment after the words "persons reside," the following words were inserted (namely), Act XXVII. "or of the agent of any such owner or occupier."

of 1871

and as if in the fourth clause, after the words "occupier of land," the following words were inserted (namely), "or of the agent of such owner or occupier "

And section 22 of the same Act shall be read as if, after the words Amendment of section 22. "occupier of land," the following words were inserted (namely), "or the Act XXVII agent of such owner or occupier."

1 Short title, The Criminal Tribes (Amendment) Act, 1876 See the Repealing and Amending

226 , for Pro-

ACT No IX or 1876.1

[28th March 1876]

An Act to enable the Government of India to declare certain coins of Native States to be a legal tender in British India

Preamble.

WHEREAS it is expedient to enable the Governor General in Council to declare that a tender of payment of money, if made in certain coins made for or issued by Native States, shall be a legal tender in British India, It is hereby enacted as follows—

Short title Local extent Commence ment Interpreta

tion clause.

1 This Act may be called the Native Coinage Act, 1876 It extends to the whole of British India.

and it shall come into force at once

2 In this Act "Native State" means any State in India which is under the Protection or political control of Her Majesty, or of which the Govern ment shall have acknowledged the supremacy of the British Crown.

Power to de clare that the comes of a lative State al all be legal tender

3 Subject to the provisions of section 4, the Governor General in Council may, from time to time, by notification in the Gazette of India declare that a tender of payment of money, if made in the coins or the coins of any specified metal, made under this Act, for any Native State, shall be a legal tender in British India, 2

and the provisions of the Indian Coinage Act, 1870, shall apply to the coins to which such notification refers so far as such provisions are applicable lat thereto, and save as expressly provided by such notification.

When such power may be

١

exercised

4. The power conferred by the first clause of section 3 shall be exer cisable only when the coins referred to in such notification comply with the following conditions (that is to say)—

in the case of coins of gold silver or bronze,

(a) their fineness is identical with that for the time being prescribed by law for coins of the Government of India of the same metal, in the case of coins whether of gold, silver, bronze or copper,

- (b) they are identical in weight with some coins of the Government of India of the same metal which may for the time being be legally coined at any Mint of the Government of India, or bear such relation thereto as is approved by the Governor General in Conneil
- (c) the devices upon their obverse and reverse differ from the devices on come now made or issued by any such Native State, and have been approved by the Governor General in Council.
- (d) upon each of such coms its value in money of the Government of India is inscribed in the English language.
- (e) the Native State for which they are coined has undertaken to abstain during a term of not less than thirty years from the date of the notification from coming in its own Mint gold, silver, bronze or conner, as the case may be and has also undertaken that no coins resembling coins for the time being a legal tender in British India shall, after the expiration of the said term, be struck under its authority or with its permission at any place within or without its jurisdiction
- (f) such State has formerly declared that a tender of payment of money. if made in coins of the Government of India of the same metal. shall in the territories subject to such State, be a legal tender in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in British Irdia
- (g) such State has also agreed that the law and rules for the time being in force respecting the cutting and breaking of coin of the Government of India reduced in weight by reasonable wearing or otherwise, or counterfeit, or called in by proclamation, shall apply to the coins made for such State under this Act, and that it will defray the cost of cutting and breaking them , and
- (h) such State has also agreed not to assue the same coins below their nominal value and not to allow any discount or other advantage to any person in order to bring them into circulation

5 It shall be lawful for any such State to send to any Mint in British Native States India metal to be made into coin under this Act, and subject to the Mint send netal to rules for the time being in force and to the provisions hereinafter contained, British India the Mint-master shall receive such metal and convert it into coin provided coinger. that it be fit for coinage

Nothing herein contained shall be deemed to entitle any such State to have coins made under this Act at any Mint of the Government of India of any metal which is not for the time being legally coined at such Mint

The Governor General in Council may impose on any metal sent to a Power to im

Mint for comage under this Act the duty (if any) leviable on the same metal for column

Presidency Banks

[1876 : Act IX. Γ1876: Act XI.

Power to limit number of coins to be this Act for any Native

under the Indian Coinage Act, 1870,1 and also a charge sufficient to defray XXIII of the expenses of comage over and above the expenses of assay and refining,

and the Mint master shall coin such metal at the charge so imposed 7. The Governor General in Council may, from time to time, with reference to the reasonable requirements of the population of any Native State, fix made under the maximum number of any coins of any particular metal that shall be coined under this Act

THE PRESIDENCY BANKS ACT, 1876

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ACT No XI of 1876 1

[11th] 4pril 1876]

An Act for constituting and regulating the Banks of Bengal, Madras and Bombay

WHEREAS the Bank of Bengal is now constituted and regulated by Act No IV of 18622 as amended by Acts No VI of 18622 and No XIX of 1870,2

an . .

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and its capital consists of twenty two millions of rupees, in shares of one thou sand rupees each.

And whereas the Bunk of Madras is now constituted and regulated by Madras Act No VI of 1866, as amended by Madras Act No I of 1871, and its capital consists of five millions six hundred and twenty-five thousand rupees, in shares of one thousand rupees each,

And whereas a Bank named the Bank of Bombay was constituted and regulated by Bombay Act No X of 1863, as amended by Bombay Acts No XV of 1866 and No I of 1867. but such Bank has been wound up and the said Bombay Acts are now obsolete and should be expressly repealed,

And whereas on the tenth day of December 1867, a joint stock Banking Company was registered and incorporated at Bombay, by irtue of the Indian Companies Act 1866 2 under the name of "The New Bank of Bombay, Limited," with a Memorandum of Association and Articles of Association then also registered, and prescribing the constitution and regulations for the management of such Bank,

And whereas the Government of India now holds two thousand two hundred shares in the wid Bank of Bengal, and five hundred and sixty two and a half shares in the said Bank of Madras and, under the provisions of the said Act No IV of 1862 1 and Madras Act No VI of 1866,1 is bound to appoint, and has power to remove certain of the directors of the said Banks of Bengal and Madras respectively and has also power to give a proxy to any person whom the Governor General in Council may appoint, to attend and vote at any meeting of the proprietors of each of the same Banks.

And whereas the Government of India has determined to sell its said shares and to surrender its said powers, and it is expedient to relice the said Govern ment from the said duty of appointing directors and to repeal the said enactments and to consolidate such of them as relate to the said Banks of Bengal and Vadtra respectively with the changes rendered necessary or desirable by such sale, surrender and relate,

And whereas it is expedient to reduce the said capital of the Bank of Bengal by two millions of rupees and to reduce the said capital of the Bank of Vadras by six hundred and twenty five thousand rupees, and to divide the capital so reduced of each of the same Banks into sharts of five hundred rupees each.

And whereas it is expedient that the said New Bank of Bombay, Limited, should be reconstituted and regulated, in manner in this Act provided, under the name of the Bank of Bombay.

¹ Pepcal d by this Act s 2 & Sch

[&]quot; See now the Indian Companies Act 1850 (VI of 1500) General Acts Vol. III.

Γ1876: Act XI.

(Chap I -Preliminary)

It is hereby enacted as follows -

CHAPTER I

PRELIMINARY

Short title Commence ment Repeal of enactments

- 1. This Act may be called the Presidency Banks Act, 1876. and it shall come into force on the first day of May, 1876
- 2. On and from that day the Statute specified in the first part of the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof, and the Acts specified in the second, third and fourth parts of the same schedule shall be wholly repealed But all bye-laws and regulations made under any such Act, and then in force, shall, so far as they are consis tent with this Act, be deemed to have been made hereunder

References in Act X of 1866

" Capital "

" Shares "

tors *

"Directors"

" Board."

Auditors '

and Secre

of Bengal, the Bank of Madras and the Bank of Bombay, shall be deemed to be made respectively to the Bank of Bengal, the Bank of Madras and the Bank of Bombay as constituted by this Act 3 In this Act, unless there be something repugnant in the subject or con-

The references made in the Indian Companies Act, 1866,1 to the Bank X o

Interpreta tion clause text,-

"the Bank" means the Bank of Bengal, the Bank of Madras, or the Bank " The Bank of Bombay (as the case may be), as constituted and regulated by this Act

" capital" means the capital for the time being of the Bank "shares" means the shares for the time being of the capital, and includes

also half shares " capital stock " means that part of the capital into which wholly paid-up " Capital stock'" shares have been converted or consolidated, and in the case of the Bank of Bengal and the Bank of Madras includes the present consolidated stock of such

Banks respectively "registered" means registered in the books of the Bank "Registered '

"Share-"shareholders" means the duly registered holders from time to time holders " of the shares of the Bank " Proprie

" proprietors " means the duly registered holders from time to time of the canital stock of the Bank

"directors" means the directors assembled for the purpose of performing any of their functions under this Act

"board" means a meeting of the directors duly called and constituted, or, as the case may be, the directors assembled at a Board

"auditors" and "secretary" mean those respective officers from time to time of the Bank, and "secretary" includes a secretary and treasurer and a deputy secretary

¹ Repealed by the Indian Companies Act 1882 (VI of 1882), General Acts Vol III

(Chapter II - Constitution)

"general meeting" means the meeting of proprietors or shareholders "General or both, held annually under section 49, it includes any adjourned holding thereof

"special meeting" means a meeting of proprietors or shareholders or both, held for the transaction of some particular business specified in the notice convening the meeting, it includes any adjourned holding thereof

" Special meeting "

"special resolution" means a resolution passed at a special meeting

" Special resolution " "Off ce "

" office " means the office or principal office for the time being of the Bank " goods " includes also bullion, wares and merchandise

" Goods " " Presidency

"Presidency of Fort St George" means the territories now under the government of the Governor of Fort St George in Council

of Lort St George "

"Presidency of Bombay" means the territories now under the government "Presidency of the Governor of Bombay in Council, and

of Rombay

"Presidency of Fort William" means all the territories in British India Presidency other than the Presidency of Fort St. George and the Presidency of Bombay

of lort Will am "

CHAPTER II

Constitution

4. The several persons who, when this Act comes into force, are respectively tively the proprietors and shareholders of the said Bank of Bengal, Bank of holders Madras and New Bank of Bombay Limited (hereinafter called the present of present Banks), or who shall at any time thereafter, by virtue of this or any other form bodies Act regulating the Bank, become proprietors or shareholders, shall continue corporate, and constitute and be bodies corporate with perpetual succession, under the name.-

in the case of the proprietors and shareholders of the and Bank of Bengalof "The Bank of Bengal."

in the case of the proprietors and shareholders of the said Bank of Madras of "The Bank of Madras," and

in the case of the shareholders and proprietors of the said New Bank of Bombay, I mited-of "The Bank of Bombay."

and shall respectively possess and enjoy all the rights, powers and immunities incident by law to a corporation aggregate, subject, nevertheless, to the provisions of this or any other Act for the time being in force regulating the Bank,

and in particular, the proprietors of the Bank shall not be hable for its with limited debts and engagements, and the shareholders of the Bank shall be so liable liability only to the extent of their shares not fully paid up

The several persons who are then proprietors and shareholders of each of Proprietors the present Banks of Bengal and Madras, or the executors or administrators of bolders of

(Chapter II .- Constitution)

present
Banks to be
proprietors
and share
bot lers of
new Banks

such proprietors and shareholders respectively, shall be entitled to be registered as proprietors and holders of a like quantity of stock and a proportionate number of shares, as is or are then registered in their names respectively, or in the names of the persons whom they represent respectively in the books of each of the said present Banks of Bengal and Madras, two shares in the Bank of Bengal as constituted by this Act being deemed equivalent to one share in the present Bank of Bengal, and two shares in the Bank of Madras as constituted by this Act being deemed equivalent to one share in the present Bank of Madras.

and the several persons who are then shareholders of the said New Bank of Bombay, Limited, or the executors or administrators of such shareholders respectively, shall be registered as holders of a like number of shares of the Bank of Bombay as constituted by this Act as are then registered in their names respectively, or in the names of the persons whom they represent respectively in the books of the said New Bank of Bombay, Limited and all such shares upon which the sum of five hundred rupees has then been paid, shall be deemed to have been fully paid up

Property of present Bluks to yest respectively in new Banks

5 All the property, moveable and immoveable, and all the securities, claims and demands, and the benefits of all agreements, of or to which the present Banks are or shall be respectively possessed or entitled, or which shall, or but for this Act might be, on the said first day of May 1876, or might at any time thereafter have been, due to or claimed by, the said Banks respectively shall, by urtine of this Act, become vested in and devolve upon, and may be claimed, made and recovered by.—

in the case of the said Bank of Bengal,—the Bank of Bengal as constituted by this Act.

in the case of the said Bank of Madras, -- the Bank of Madras as constituted by this Act and

in the case of the said New Bank of Bombay, Limited,—the Bank of Bombay as constituted by this Act,

Clience against present Banks and the Bool, shall from and after the said first day of May 1876, he liable and subject to all debts, claims and demands which shall then be due or claim able from, or which, but for this Act, might be then or might at any time thereafter, have been due or claimable from or made against the said Bank of Bengal, Bank of Madras or New Bank of Bombay, Limited, as the case may be,

and no suit or legal proceeding then Lending by or against the said Bank of Bençal, Bank of Madras or New Bank of Bombay, Limited, shill cease, or abate, or become defective, in consequence of this Act, but may be continued and prosecuted by or against the Bank

New Bank of Rombay, Be Lamned wound up. as

6 The transfer of the assets and habilities of the said New Bank of Bombay, Limited, to the Bank of Bombay by virtue of this Act, shall operate as a winding up and huudation of the said New Bank of Bombay, Limited (Chapter 11 -- Co istitution)

No shareholder or creditor of the said New Bank of Bombay Limited shail take any proceedings for winding up the same under the Indian Companies Act 1866 or any Act for the tip e being in force relating to the winding up of Companies

and no person hall make assert or take any claims demands or proceedings against the same Bank or the directors or officers thereof except so far as may be necessary for enforcing the provisions of this or any other act for the time being in force regulating the Bank of Bombiy

7 The Bank shall sue and be sued by its said corporate name

and shall use such corporate seal as the directors from time to time appoint, and use cor

and may as such body corporate acquire and hold either absolutely or porate seals and t av conditionally for a term or in perpetuity any property whatsoever moveable hold and or immoveable and transfer assign and convey the same

8 The seal of the Bank shall not be affixed to any instrument except in Seal how the presence of at least two directors and of the secretary and treasurer, used who shall sign their names to the instrument in token of their presence and such signing shall be independent of the signing of any person who may sign the instrument as a witness

Unless so signed as aforesaid such instrument shall be of no validity

9 Contracts may be made on behalf of the Bank as follows -(a) any contract which if made between private persons would be by Contracts law required to be in writing and if made according to English how made law to be under seal may be made on behalf of the Bank in writing under its corporate seal and such cortract may be in the same

manner varied or discharged (b) any contract which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith may be made on behalf of the Bank by writing signed by any person acting under the express or implied authority of the Bank and such contract may in the same may her be varied

(c) any contract which if made between private persons would by law be valid although made by parol only and not reduced into writing may be made by parol on behalf of the Bank by any person acting under the express or implied authority of the Bank and such contract may in the same manner be varied and discharged .

and discharged

and all contracts made according to the provisions herem contained shall be effectual in law and shall be binding upon the Bank and other parties thereto and their legal representatives

Banks to sue and be sed

transfer

property

CHAPTER III

CAPITAL

Capital of Bank of Bengal 10. The capital of the Bank of Bengal shall consist of twenty millions of rupees in shares of five hundred rupees each, divisible into half shares, with power to merease the same, in manner hereinafter provided

1*

*.

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Capital of Bank of

The capital of the Bank of Madras shall consist of five millions of rupees, in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided 1* * * * *.

Capital of Bank of

The capital of the Bank of Bombay shall consist of ten millions of rupees, in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided 1* * * *

Capital of Nev Bank of For bay,

*
11. The capital of the said New Bank of Bombay, Limited, already created, shall, on the first day of May 1876, constitute the capital of the Bank of Bombay, subject to be increased as aforesaid

Bank of Bon bay Surrender of paid up shares for stock,

Lir itel, to be carrial of

12. Any shareholder may from time to time surrender his wholly paid-up shares, or any of them, to the directors and demand and receive from the Bank, in lieu thereof, capital stock to the amount represented by the shares so surrendered, and any proprietor may from time to time surrender his stock, or any

horrender of stock for shares

Power to

portion thereof, to the directors and demand and receive from the Bank, in lieu thereof, shares to the like amount, or as near thereto as practicable 13. The proprietors and shareholders of the Bank may from time to time by special resolution and with the praying sanction of the Governor General

reduce capital by special resolution and with the previous sanction of the Governor General in Council increase or reduce the capital of the Bank

Touvided that no such special resolution shall be deemed to have been passed, unless at least one third in number of the proprietors or shareholders, hold-

Procedure on resolution to

ing at least one half of the paid up capital of the Bank for the time being, be present in person or by proxy, and a majority poll by open voting in favour of the said resolution

14. When any such special resolution to increase the capital has been to passed, the directors may, subject to the provisions of this or any other Act for the time being in force regulating such Bank, and to the special direction (if any) given in reference thereto by the meeting at which such resolution

resolution to increase capital

has been passed,—

(a) make such orders as they think fit for the opening of subscriptions

¹ The words "to thirty millions of rupees," "to twelve millions of rupees and "to twenty millions of rupees" in s 10 were repealed by the Presidency Banks (Amendment) Act 1007 (I ct 1907) s 2 General Acts, Vol. VI.

• *

(Chap III - Capital . Chap IV - Forfesture of Stock and Shares)

towards such increase of capital by the proprietors and share holders .

- (b) allow to the proprietors and shareholders such period to fill up the subscription as to the directors seem fit.
- (c) prescribe the manner in which the proprietors and shareholders shall subscribe and pay into the Bank the proportions of new capital which they may respectively desire to subscribe and
- (d) make such orders as the directors think fit for the disposal and allotment of the amount of new capital that may not be subscribed for and paid up in manner aforesaid

15 When any such special resolution to reduce the capital has been Procedure on passed the directors may (subject as aforesaid) prescribe the manner in resolution to which the reduction shall be carried into effect

reduce capital

16 Any new capital created under the provisions of section 13 shall be New capital subject to the provisions of this or any other Act regulating the Bank in force to be subject for the time being

to provisions of Act.

CHAPTER IV

FORFEITURE OF STOCK AND SHARES

17 If any proprietor or shareholder is indebted to the Bank, the Bank Powers in may withhold payment of the dividends on the stock or shares of such pro prietor or shareholder not being registered as held in trust, or as executor or shareholder or administrator and apply them in payment of the debt .

regard to debted to

and the Bank may refuse to register the transfer of any such stock or Bank. shares until payment of such debt,

and after demand and default of payment, and notice in that behalf given to such proprietor or shareholder, or his constituted agent, or by public ad vertisement in the local official Gazette of the debt remain unpaid for the space of three months after such notice the Bank may advertise in the local official Gazette such stock or shares for sale on a day not less than fifteen days from the publication of such advertisement,

and may, on such day, sell by public auction, and subject to such conditions if any, as the Bank thinks fit such stock or shares or so much or so many thereof as may be necessary, and apply the proceeds thereof in or towards payment of the said debt with interest, from the day appointed for the

- I Act

Brone

(Chapter V -Certificates, Transfer and Transmission of Shares and Stock)

payment of such debt to the time of actual payment, at such rate as may have been agreed upon, or, in the absence of such agreement, at the highest rate current for advances by way of local discounts by the Bank.

and shall pay over the surplus of any, to such proprietor or shareholder or to his lawful representative

CHAPTER V

CERTIFICATES TRANSFER AND TRANSMISSION OF SHARKS AND STOCK

Certificates

18 Every shareholder shall be entitled to a certificate, under the corporate seal of the Bank, and signed by two directors and the Secretary and Treasurer, specifying the shares held by him, and in the case of shares which are not wholly paid up, the amount paid thereon.

and any holder of more than one half share may, at his option, demand a certificate for each such half share, or one or more certificates for all or any of such half shares and such certificate or certificates shall be delivered to him accordingly Provided that the number of such certificates shall in no case exceed the number of half shares in respect of which they are so delivered

Peccipts for

Every propertor of capital stock shall be entitled to a receipt signed by two directors and the secretary and treasurer, and specifying the amount of stock held by him, and any such proprietor may, at his option, demand one receipt for the whole of the stock, or separate receipts for any portions of the stock, so held by him, and such receipt or receipts shall be delivered to him accordingly. Provided that no receipt shall be delivered for a portion of stock less than two hundred and fifty rupees

lees for certin ates and receipts For every certificate and receipt delivered under this section there shall be paid such fee as may for the time being be prescribed under section 63, clause (A) Provided that no fee shall be payable for certificates or receipts delivered to the persons referred to in section 4 for shares in or stock of the Bank

Certificates and receipts

Every such certificate and receipt shall be prima facie evidence of the title of the shareholder or proprietor to the shares or stock therein specified

to be
evidence
Stock and
shares to be
moveable
property

19 The stock and shares of every proprietor and shareholder shall be move able property, capable of being transferred in manner provided by the regulations contained herein, or in any other Act regulating the Bank for the time being in force, and shall not be of the nature of immoveable property, and each share shall be distinguished by its appropriate number

Form of transfer to be approved by Boarn 20 Fvery transfer of stock or shares may be by endotse ent on the certificate or in such other form as the board from time to time may approve, and shall be presented to the Bank accompanied by such evidence as the board may require to prove the title of the transferor

(Chapter V -Certificates, Transfer and Transmission of Shares and Stock --Chapter VI -- Directors)

Every such transfer shall be verified in such manner as the board require, Board may and the board may refuse to register any such transfer until the same be so evidence of verified, and, in the case of shares not fully paid up, unless the transferee is transmission approved by the board

The transferor shall be deemed to sum un the proprietor or holder of the Transferor stock or shares transferred until the name of the transferce is registered in proprietor respect thereof

till transfer

21 The directors may from time to time close the register and transfer. Power to books of the Bank for any period or periods not exceeding in the whole thirty close transfer days in any twelve consecutive months

registered.

22 The proprietors and shareholders for the time being, and no other corporation perso s shall be members respectively of the bodies corporate hereby to cons st of constituted.

registered propr etors or shareholders only

and except for the purpose of excluding the provisions of section 17, the Notice of Bank shall not be bound or affected by notice of any trust to which any stock trusts. or share may be subject in the hands of the proprietor or holder thereof . and when any stock or share is vested in more than one proprietor or holder. Shares vested

such proprietors or shareholders shall, as between themselves and the Bank, in several be considered as joint owners with benefit of survivorship Provided that as regards voting at meetings, service of notices, and receipt of dividend the person whose name stands first in the register as one of the proprietors or holder of such stock or shares shall be deemed the sele

proprietor or holder thereof 23 When by the death of any proprietor or shareholder his stock or shares Transmission shall devolve on his legal representative the Bank shall not be bound to re-cognize any legal representative of such proprietor or shareholder, other than a person who has taken out from a Court having purediction in this behalf shareholders probate of the will or letters of administration to the estate of the deceased

Any person becoming entitled to stock or shares in consequence of the Transaccion insolvency or bankruptes of any proprietor or sharel older or in consequence or marriage of the marriage of any female proprietor or sharel Her, may be registered as a preprictor or shareholder upon such evidence being produced as the directors may from time to time require

CHAPTER VI

DIRICTORS

24 The business of the Pank shall be managed by the board, which shall Board. in the first is stance coreist of six directors and n ver Leequently consist of

SOL II

2 ĸ

(Chapter VI -- Directors)

such number, not less than six, and not more than nine, as may be fixed by a special resolution

Such directors shall be selected by vote of a general or special meeting Three of the directors shall form a quorum for the transaction of business 25 The persons who, on the first day of May 1876, are respectively directors of the Bank of Bengal, the Bank of Madras, and the New Bank of Bombay, Limited, shall be respectively directors of the Burk of Bengal, the Bank of Madras, and the Bank of Bombay as constituted by this Act, subject to re-

Two directors to go out by rotation annually

Quorum

Present directors to

be continued.

moval as hereinafter provided and to the other provisions herein contained. 26 The two directors who have been longest in office shall go out of office at the general meeting

Any director so retiring may be re-elected at such meeting, and if any question arise as to which of the directors who have been the same time in office shall retire, such question shall be decided by the directors by ballot.

Qualification of directors

27 Clause 1 —No person shall be qualified to serve as a director of a Bank who is not a proprietor or holder in his own right of unencumbered stock or shares of such Bank, to the nominal amount of ten thousand rupees at the least.

Disqualifica tion of direc tors

Clause 2 -No person shall be qualified to serve as a director-

if he holds the office of director, provisional director, promoter, agent or manager of any other joint-stock Bank established, or having a branch or agency, in British India or advertised as about to be established, or to have a branch or agency, in British India, or

if he is a salaried officer of Government not specially authorized by the Governor General in Council to serve as a director .

and the office of director shall be vacated-

if the person holding it resigns his office or dies,

if he accepts or holds any other office of profit under the Bank;

if he becomes insolvent or bankrupt, or compounds with his creditors;

if he is declared lunatic, or becomes of unsound mind , if he is absent from the board for more than three consecutive months;

if he ceases to hold in his own right the amount or number of unencumbered stock or shares required to qualify him for the office

Clause 3 -No two persons who are partners of the same mercantile firm, or one of whom is the general agent of, or holds a power of procuration from, the other, or from a mercantile firm of which the other is a partner, shall be

Co partners of same firm not to serve as directors at same time

Power to remove directors

eligible or qualified to serve as directors at the same time Clause 4 -The proprietors or shareholders may, by a special resolution passed by the votes of proprietors or shareholders holding in the aggregate not less than one half of the capital, remove any director before the expiration (Chanter VI -Directors)

of his period of office, and appoint in his stead a qualified person, who shall in all respects stand in his place

28 At the first meeting of the directors in every year, they shall choose a Directors to president and vice-president from among themselves, and whenever the office president of president or vice-president becomes vacant, they shall, at their next meet- and vice and, choose a successor for the remainder of the current year

president

1[Provided that no person shall be chosen to be president or vice.president twice in succession 1

The president, or in his absence the vice-president, shall be chairman at all Chairman meetings whether of directors or of proprietors or shareholders, or of proprietors and shareholders and shall have an additional or casting vote in all cases of an equal division of votes Provided that if both the president and vice-president Casting vote be absent at any meeting, the directors present shall elect a chairman for such meeting from among themselves and such chairman shall, in case of an equal division of votes, have an additional or casting vote

29 The board shall have power at any time, and from time to time, to Vacancies supply any vacancies in their number arising from the death resignation or directors how disqualification under section 27, of any director

filled up.

Any director so appointed shall, for the purposes of section 26, be considered to have held office from the date on which the director in whose place he is appointed was elected, or (where such director was appointed under this section) from the date on which his mediate or immediate predecessor was elected

30 All acts done by any person acting in good faith as a director shall be Acts of as valid as if he was a director, notwithstanding it be afterwards discovered that there was some defect in his appointment or qualification

directors valid notwith *tsndine subsequent discovery of disqualifica-

31. Every director shall be indemnified by the Bank against all losses and expenses incurred by him in or about the discharge of his duties, except such as bappen from his own wilful act or default

Indemnity of directors

No director shall be responsible for any other director or for any officer, clerk or servant of the Bank, or for any loss or expense happening to the Bank by the insufficiency or deficiency of value of, or title to, any property or security acquired or taken on behalf of the Bank, or by the insolvency, bankruptcy or wrongful act of any customer or debtor of the Bank, or by anything done in the execution of the duties of his office or in relation thereto or otherwase than for his own wilful act or default

¹ This proves was saided by the Presidence Banks Act, 1879 (V of 1879) a 2. General Acts. Vol III.

(Chapter VII -Officers of the Bank)

CHAPTER VII

OFFICERS OF THE BANK

Appointment
selaries
suspension
and removal
of officers

32. The directors shall have power-

to appoint such officers clerks and servants as may be necessary to conduct the business of the Bank,

to grant salaries, pensions and other emoluments to such officers clerks and servants and

to suspend or remove any officer, clerk or servant of the Bank

Accounts, receipts and documents of Bank by whom to be signed!

33 The Secretary and such other officers of the Bank as the directors may of by writing notify in the local official Gazette (and, in the case of the Bank of Bengal also in the Gazette of India) are hereby severally empowered for and on behalf of the Bank to endorse and transfer promissory notes stock receipts, stock, debentures, shares, securities and documents of title to goods, standing in the name of, or held by, the Bank

and to draw accept and endorse bills of exchange, bank post bills, and letters of credit in the current and authorised business of the Bank

and to sign all other accounts, receipts and documents connected with such business

Officers forbidden to engage in other commercial business

34 No Secretary, inspector, manager or accountant in the service of the Bank, and 4without the previous sanction of the board) no khazánchi, cashier

or shroff in the service of the Bank at the principal office and, without the previous sanction of the board, no agent, khazánch, cashier or shroff at any branch or agency of the Bank,

shall engage in any other banking or commercial business either on his own account or as agent for any other person or persons or shall act as broker or agent for the sale or purchase of Government or other securities

Security from officers 35. Every person appointed to hold, or act in any one or more of the said offices, and every other officer from whom the directors may from time to time think fit to require it, shall give security to the directors for the faithful discharge of his duty to the satisfaction of the directors in such amount and in such manner as they think proper

The sccurity to be given as aforesaid by the person holding or acting in the office of secretary shall not be in a less amount than fifty thousand rupees

¹ These words were inserted by the Presidency Banks Act 1879 (V of 1879) a 3 General Acts, Vol. III.

(Chapter VIII -Business)

CHAPTER VIII

BUSINESS

36. The Bank is authorized to carry on and transact the several kinds of Business business hereinafter specified (that is to say)

which Banks may transact

- (a) the advancing and lending money, and opening cash-credits, upon the security of-(1) promissory notes, debentures, stock and other securities of the
 - Government of India, or of the United Kingdom of Great Britain and Ireland land, in the case of the Bank of Madras. securities of the Government of Ceylon].
 - (2) bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India.
 - (3) stock or debentures of, or shares in, Railway or other Companies. the interest whereon shall have been guaranteed by the Secretary of State for India in Council 2 for such securities issued by State aided railways as the Governor General in Council may from time to time prescribe].
 - (4) debentures or other securities for money issued by, or on behalf of, any municipal body 2 for any district board 1, 3 for any body of Commissioners for making improvements in any port or of trustees of any portl under the authority of any Act of a legislature established in British India for the Trustees for the . Improvement of the City of Bombay under the authority of the 5City of Bombay Improvement Act, 1898];
 - (5) bullion or other goods which, or the documents of title to which, are denosited with, or assigned to, the Bank as security for such advances, loans or credits, and
 - (6) accepted bills of exchange and promissory notes indersed by the payees fland joint and several promissory notes of two or more persons or firms unconnected with each other in seperal partnership]

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¹These words were added by the Presidency Banks (Amendment) Act, 1907 (I of 1907). a 3(1), General Acts, Vol. VI 2 These words in clauses (3) and (4) respectively were added by the Presidency Banks

⁽Amendment) Act, 1907 (t of 1907) s. 3 (ii) and (iii) respectively, and the words in clause 6 were added by s. 3 (iv) of the same Act General Acts Vol. VI 3 These words were inserted by the Presidency Banks Act, 1579 (V of 1979), s. 4, General Acts, Vol. III

⁴ These words were ad led by the Presidency Banks Act, 1999 (XX of 1999) a. 2, General Acts Vol. V

Born, Code

(Chapter VIII -Business)

- Provided that such advances and loans may be made if the directors think fit, to the Secretary of State for India in Council without any specific security,
- (b) the selling and realization of the proceeds of sale of any such promissory notes, debentures, stock receipts, bonds, annuities, stock, shares, securities bullion or goods which, or the documents of title to which, have been deposited with, or assigned to, the Bank as security for such advances, loans or credits, or which are held by the Bank or over which the Bank is entitled to any hen or charge in respect of any such loan or advance or credit or any debt or claim of the Bank, and which have not been redeemed in due time in accordance with the terms and conditions (if any) of such deposit or assignment,
- I[bb) the advancing and lending money to Courts of Wards upon the security of estates in their charge or under their superintendence and the realisation of such advances or loans and any interest due thereon, provided that no such advance or loan shall be made without the previous sanction of the Local Government concerned and that the period for which any such advance or loan is made shall not exceed six months;]
- (c) the drawing, discounting, buying and selling of bills of exchange and other negotiable securities payable in India, or * * * * 2 in Ceylon.
- (d) the investing of the funds of the Bank upon any of the securities specified in paragraph (a) of this section, clauses (1), (2), (3) and (4) and converting the same into money when required,

and from time to time altering converting and transposing such investments for or into others of the investments above specified,

- 1 Provided that-
 - (1) the power of investing in the securities of the Government of Ceylon shall extend only to the Lank of Madraz, and
- (2) the total of the assets held at any time by the Bank of Madras either upon the security of, or invested in securities of the Government of Cerlon in accordance with the authority conferred by paragraph, (a), clause (1) or this paragraph, shall not exceed the sum of the deposits held and balances of cash accounts at credit at the Ceylon Branch of the said Bank of Madras,

(Chapter VIII -B (siness)

- (e) the making issuing and circulating of bank post bills and letters of credit made payable in India or 1 * * * * ir Ceylon to order, or otherwise than to the bearer on demand
- (f) the tuying and selling of gold and silver whether coined or uncoined
- (g) the receiving of deposits and keeping cash accounts on such terms as may be agreed on
- 'h) the acceptance of the charge and management of plate jewe's title deeds or other valuable goods on such terms as may be agreed upon
- (i) the selling and realising of all property whether moveable or im moveable which may in any way come into the possession of the Bank in satisfaction or part satisfact on of any of its claims
- (i) the transacting of perumary agency business on commission.
 - (A) the acting as agent on commission in the transaction of the following kinds of husiness (namely) --
 - (I) the buying celling transferring and taking charge of any securities or any shares in any public Company
 - (2) the receiving of the proceeds whether principal interest or
 - (3) the remutance of such proceeds at the risk of the principal by public or private bills of exchange payable either in India or class where
 - (!) the drawing of bills of exchange and the granting of letters of credit payable out of India for the use of principals for the purpose of the remittances mentioned in the last preceding clause of this section,
- (m) the buying for the purpose of meeting such bills or letters of credit, of bills of exchange payable out of India at any usance not ex ceeding six months
- 2[(mm) the borroving of money in India for the purposes of the Bank s business and the giving of security for money so borrowed by pledging assets or otherwise 1
- (n) and generally the doing of all such matters and things as may be meidental or subsidiary to the transacting of the various kinds of business hereinbefore specified
- (o) It shall also be lawful for the Bank under any arrangement or agree ment with the Secretary of State for India in Council—
 - (I) to act as banker for and to pay receive collect and remit money bullion and securities on behalf of the Government.

¹ Thou w ris " o tie case of the Rusk of Madras were repealed by the Prendency Banks Act 1870 (c. 187) Central Acts 10 HI Thus clause was added by the Pres of new Banks Act 18 9 (Vof 1879) * 4 General Acts, 10 HI

[1876: Act XI.

(Chapter VIII -- Business)

(2) to undertake and transact any other business which the Government may from time to time entrust to the Bank

And the directors shall have power from time to time to arrange and settle with the Governor General in Council the terms of remuneration on which such business shall be undertaken by the Bank, and also as to the examination and audit from time to time of the accounts and affairs of the Bank by or on behalf of the Governor General in Council

Business which Banks may not transact

- 37. The directors shall not transact any kind of banking business other than those above specified, and in particular they shall not make any loan or advance—
 - (a) for a longer period than I [six months], or
 - (b) upon the security of stock or shares of the Bank of which they are directors, or
 - (c) 2[save in the case of the estates specified in section 36, paragraph (bb)], upon mortgage, or in any other manner upon the security, of any mimoveable property, or the documents of title relating thereto,
 - 3[(d) nor shall they (except upon the security mentioned in section 36, paragraph (a), Nos 1 to 5 inclusive)
 - discount bills for any individual or partnership firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or
 - lend or advance in any way to any individual or partnershipfirm an amount exceeding in the whole at any one time such sum as may be so prescribed.]
 - (e) nor shall they discount or buy, or advance and lend, or open cashcredits on the security of any negotiable instrument of any midradual or partnership firm, payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership,
 - (f) nor shall they discount or buy, or advance and lend, or open cashcredits on the security of any negotiable security having at the

79), s 5, General

numbers (1) to

(Chapter VIII -Business)

date of the proposed transaction a longer period to run than 1[six months] or, if drawn after sight, drawn for a longer period than Ifsix months]

Nothing contained in this Act shall be deemed to prevent the directors Overdrawing from allowing any person who keeps an account with the Bank 3[to overdraw] such account, without security, to the extent of 4[such sums not exceeding at one time ten thousand rupees in the whole as may be prescribed for the time being by the bye laws made under this Act]

38. Until the expiration of at least fourteen days after notice has been given by notification of the Governor General in Council published, in the case of the Bank of Bengal, in the Gazette of India and the Calcutta Gazette and in the cases of the Bank of Madras and the Bank of Bombay, in the local official Gazette, that the Bank will no longer act as banker for, or pay, receive. collect or remit money, bullion and securities on behalf of the Government.

Sums payable by or to Government to be payable

- all sums payable by or to the Secretary of State for India in Council, or by or to the Governor General in Council, or the Government of Bengal or the Governor of Fort St George in Council or the Governor of Bombay in Council. on behalf of the Secretary of State for India in Council, at the General Treasury of Fort William in Bengal, or at the General Treasury at Madras, or at the General Treasury at Bombay, shall be payable
 - in the case of the Secretary of State for India in Council, or the Governor General in Council-at the office of the Bank of Bengal, the Bank
 - of Madras, or the Bank of Bombay, as the case may be. in the case of the Government of Bengal-at the office of the Bank of
 - in the case of the Governor of Fort St George in Council-at the office of the Bank of Madras, and
 - in the case of the Governor of Bombay in Council-at the office of the Bank of Bombay
- 39. Whenever presentment of any promissory note, bond or other security Presentment for payment or any other purpose at any of the said General Treasuries would

1The words "six months" were substituted in both places in which they occur for "three months" by the Presidency Banks (Amendment) Act, 1907 (I of 1907) s. 4 (iii) General Acts.

The following proviso was repealed by the Presidency Banks (Amendment) Act, 1907 (I of 1907) # 4 (m) #b+f :-

" Provided that in the case of the Bank of Madras the directors may discount negotiable securities payable in Ceylon having at the date of the transaction a period to run not exceeding four months." 3 The words of the

overdrawing " by the Presidency

exceeding at any one time two mendment) Act, 1907 (I of 1907) a. 4 (17), ibid

(Chapter VIII -Business)

notes at Banks	heretofore have been necessary or sufficient, presentment for such purpose- shall be necessary or sufficient (as the case may be) until the expiration of four- teen days after the giving of the notice mentioned in section 38—
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in the case of the General Treasury of Fort William-at the office of the Bank of Bengal.

in the case of the General Treasury at Madras-at the office of the Bank of Madras, and

in the case of the General Treasury at Bombav-at the office of the Bank of Bombay

40. The office of the Bank of Bengal shall be at Calcutta, that of the Piace of business Bank of Madras shall be at Madras, and that of the Bank of Bombay shall bein the Island of Bombay . and the business of the Bank shall be carried on at its office, and at such

other place or places in India as the Board may deem advisable, under the provisions of section 42 41 For the purpose of providing offices and places in and at which to

carry on and manage the business of the Bank and proper residences for its agents, the directors may-

(a) acquire any interest in immoveable property, and

Acquisition

of business

promisos.

Establish

ment of branches and

serncies.

Proviso

(b) sell, buy in resell, exchange, let, furnish, repair, insure against fire and otherwise deal with all or any part of the same as they may consider most conducive to the interests of the Bank

42 It shall be lawful for the directors to maintain as branches or agencies of the Bank any branches or agencies of the present Banks which may be in existence on the first day of May 1876

and from time to time to establish branches or agencies at such places within the Presidency in which the Bank is situate as they deem advantageous

to the interest of the Bank and with the previous consent of the Governor General in Council, and subject to such restrictions as to the business to be transacted as he thinks fit in each case to impose (such consent and restrictions being notified in the Gazette of India) to establish branches or agencies at such places outside the Presidency in which the Bank is situate, as the directors deem advantageous for the interests of the Bank

Provided that no agency of the Bank now or hereafter established in

Bombay, Calcutta or Madras shall advance, or lend money, or open cash cre

dits on securities, or receive deposits and keep cash accounts or discount bills of exchange drawn and payable in the Presidency in which it is so estab habed or shall act as agent on commission, or transact any business except as

agent of its principal Bank, or any of its branches or other agencies

(Chapter VIII -Business Chapter IX -Accounts and Dividends)

The directors may discontinue any branch or agency maintained or estab lished under this section

142A (I) With the sanction of the Governor General in Council, the direct. ors may at any time enter into negotiations for and purchase and take over the business including the capital, assets and liabilities, of any banking com. pany carrying on business in India of which the capital is divided into shares, other Banks and may pay the consideration for such purchase either in cash or by the allot ment of shares in the capital stock of the Bank, or partly in one and partly in purpose to the other of these ways and may, for the purpose of any such allotment of shares, capital mcrease the capital stock of the Bank by the issue of such number of shares as may be determined on by them

Power of Bank to take over business and for that increase its

- Provided that the directors shall not make any increase of the capital stock of the Bank under this section unless the proprietors and shareholders have passed a special resolution in accordance with the provisions of section 13 sanctioning such increase
- (2) The persons to whom such new shares are allotted shall be proprietors of the Bank, and be in all respects in the same position as if they had respectively subscribed and paid for the shares so allotted to them

Provided always that the business so purchased shall after the purchase be carried on by the Bank subject to the several restrictions contained in this Act

Explanation -For the purposes of this section "banking company" means any company formed for the purpose of carrying on the business of banking and registered under the 2Indian Companies Act, 1882 or the law relating to Companies for the time being in force in British India

CHAPTER IX

ACCOUNTS AND DIVIDENDS

43 The directors shall cause the books of the Bank to be balanced on every Books to be thirty first day of December and every thirtieth day of June

INICE & YEAR

A statement of the balance at every such period, signed by a majority of the directors shall be forthwith sent to a Secretary to the Government of India, and in the cases of the Bank of Madras and the Bank of Bombay, also to a Secretary to the Local Government

¹ S. 42A was inserted by the Presidency Banks (Amendment) Act, 1907 (I of 1907), a 5 Ceneral Acts Vol VI # General Acts, Vol. 11L.

[1876: Act XI.

(Chapter IX - Accounts and Dundends Chapter X - Audit)

The Governor General in Council in the case of each of the said Banks, and the Local Government in the case of the Bank of Madras and the Bank of Bombay, shall (so long as any such arrangement with the Government as aforesaid, which has already been, or shall hereafter be entered into, remains in foice) at all times be entitled to require of the directors any information touching the affairs of the Bank and the production of any document of the Bank.

and, in the case of each of the said Banks, the Governor General in Council may require the publication of such statements of its assets and liabilities at such intervals and in such form and manuer as the Governor General in Council thinks fit.

I requisition under this section shall be signified in writing under the hand of a Secretary to the Government of India or to the Local Government (as the case may be) and the Directors shall comply with every such requisition

Dividends to be deter mined half yearly 44 An account of the profits of the Bank during the previous half-year shall be taken on or immediately after every thirty-first day of December and every thirtieth day of June.

and a dividend shall be made as soon thereafter as conveniently may

and the amount of such dividend shall be determined by the directors, subject to the provisions of section 45

No unpaid dividend shall bear interest as against the Bank

Reserve fund 45 The directors, before declaring any dividend, may set aside out of the profits of the Bank such a sum as they think proper as a reserve-fund, and invest the same upon any of the securities specified in section 36, paragraph (a), clauses (1), (2), (3) and (4)

Application of reserve fund. 46 The directors may from time to time apply such portion as they think fit of the reserve fund to meet contingencies, or for equalising dividends, or for any other purposes of the Bank, which they from time to time deem expedient

CHAPTER X

AUDIT

Election of auditors 47 Two auditors shall be elected and their remuneration fixed at the annual general meeting

Who may be auditors Auditors re The auditors may be proprietors or shareholders, but no director or other officer of the Bank is eligible during his continuance in office Any auditor shall be re eligible on his quitting office

eligible Anditor a

The persons who shall be auditors on the first day of May 1876, and all

(Chapter X -Audit Chapter XI -Meetings)

auditors elected under this section, shall severally be and continue to act as tenure of

auditors until the first general meeting after their respective elections Provided that if any casual vacancy occurs in the office of any auditor, Supply of the directors shall forthwith call a special meeting for the purpose of supply. casual va

ing the same 48 Every auditor shall be supplied with a copy of the half yearly Rights and balance sheet, and it shall be his duty to examine the same, with the auditors accounts and vouchers relating thereto

Every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books accounts and other documents of the Bank, and may (at the expense of the Bank) employ accountants or other persons to assist him in investigating such accounts. and may, in relation to such accounts examine the directors or any other officer of the Bank

The auditors shall make a report to the preprietors and shareholders upon the annual balance sheet and accounts , and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance. sheet containing the particulars required by the bye laws made under this Act. and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs and in case they have called for any explanation or information from the directors, whether it has been given by the directors and whether it has been satisfactory

Such report shall be read together with the report of the directors at the annual general meeting.

CHAPTER XI.

MEETINGS

49. On the first Monday of the month of August in every year, or as soon Annual after such day as is convenient, a general meeting shall be held, at which the general directors shall submit to the proprietors and shareholders a statement of the affairs of the Bink made up to the preceding thirtieth day of June

A notice convening such meeting, signed by the secretary, shall be published in the local official Gazette and in the case of the Bank of Bengal also in the Gazette of India, at least fifteen days before the meeting is held

50 Any ten or more proprietors or shareholders holding stock or shares, special or both to the aggregate amount of fifty thousand rupees, or any three direct meet no tors may convene a special meeting upon giving fifteen days' previous notice of such meeting and of the purpose for which the same is convened, as well to the directors as also by public advertisement in the local official Gazette, and in two of the English daily newspapers and one of the Vernacular rews. babers.

(Chapter IX - Accounts and Duidends Chapter X - Audit)

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(Chapter XI -Meetings)

Provided that three months' previous notice shall be thus given of any special meeting held for the purpose of increasing or reducing the capital of the Bank and shall also be served on every proprietor and shareholder

Quorum

51 No business shall be transacted at any meeting, whether general or special, unless a quorum of twenty proprietors or shareholders or both in person or by proxy, is present at the commencement of such business

If within one hour from the time appointed for the meeting a quorum is not precent, the meeting if convened by proprietors or shareholders not being directors shall be dissolved in any other case it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum is not present it shall be adjourned use die

Decision by majority of votes. 52 At meetings whether general or special, every election and other matter submitted to the meeting shall be decided by a majority of votes except as in section 13 and in section 27, clause 4, is specially provided and no person shall be allowed to vote at any such meeting in respect of

Persons not allowed to vote

and no person small be allowed to vote at any such meeting in respect of any stock or share acquired by trunsfer, unless such transfer shall have been completed and registered at least three months before the time of such meeting.

Share. holders in arrear as to calls

And no shareholder shall be entitled to vote at any meeting in respect of any shares held by him alone or jointly, whilst anv call due from him alone or jointly remains unpaid

Power to declare resulution carried by show of hands

53 A declaration by the chairman of any meeting except a special meeting held under section 13 that a resolution has been carried thereat upon a show of hands, shall be conclusive, and an entry to that effect in the book of proceedings of the Bank shall be sufficient evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution unless immediately on such declaration, a poll be demanded in writing by five proprietors or shareholders present and entitled to vote at such meeting

Poll to be taken if demanded. 54 If a poll be demanded at shall be taken at such time and place, and (except at the special meeting last aforesaid) either by open voting or by ball lot, as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded

Proceedings and resolu tions at meetings to be binding 55 The proceedings at any meeting, and all resolutions and decisions of such meeting shall be valid and binding on the Bank so far as such proceedings, resolutions and decisions are consistent with the provisions of this or any other Act for the time being in force and regulating the Bank

Scale of votes 56 At all such meetings the proprietors or shareholders shall vote according to the following scale —

(Chapter XI —Meetings)

The p	holder of shares of which the total nominal amounts equal to Rs 10 000 shall be entitled to	rre tre	2	votes.
The p	reprietor of capital stock amounting to Rs 20 000 or tholder of shares of which the total nominal amounts equal to Rs 20 000 shall be entitled to	he ire	3	,,
The p	reprietor of capital stock amounting to Rs 30 000 or holder of shares of which the total nominal amounts equal to Rs 30 000 shall beentitled to	he are	4	
The p	roprietor of capital stock amounting to Rs 40 000 or t holder of shares of which the total nominal amounts equal to Rs 40 000 shall beentitled to		5	**
The p	reprietor of capital stock amounting to Rs 50 000 or the holder of shares of which the total nominal amounts a equal to Rs 50 000 shall be entitled to		6	,
The p	reprieter of capital stock amounting to Rs 75 000 or t holder of shares of which the total nominal amounts a equal to Rs 75 000 shall be entitled to		7	,
The p	reprietor of capital stock amounting to Rs 1 00 000 or t			

The proprietor of capital stock amounting to Rs 1 00 000 or the holder of shares of which the total nominal amounts are equal to Rs 1 00 000 shall be entitled to

The proprietor of cap tal stock amounting to Rs 1 20 000 or the holder of shares of which the total nominal amounts are equal to Rs 1 25 000 shall be entitled to . 9

The proprietor of capital stock amounting to Rs. 1 50 000 or the

he properties of scharts stars amounting to the 7 50 000 of the
h Her of shares of which the total nominal amounts are
equal to Rs 1 50 000 shall be entitled to

10 ,,

The proprietor of capital stock amounting to Rs. 1,75 000 or the holder of shares of which the total amounts are equal to Rs. 1.75 000 shall be entitled to

The proprietor of cap tal stock amounting to Rs 200 000 or the holder of shares of which the total amounts are equal to Rs 200 000 shall be entitled to

Where a person is both a proprietor of stocl and a holder of shares, his shares shall, for the purpose of this section be deemed to be stock.

No proprietor or shareholder shall be entitled to more than twelve votes at any such meeting

57. Any proprietor or chareholder entitled to vote at any meeting under the Act may give a proxy in writing either general or special under his fault properties or the hand of his attorney duly authorized, to any other proprietor or rivers foolder.

t2 ..

(Chapter XI -Meetings Chapter XII -Notices)

Such prox) shall be produced at the time of voting, and shall entitle the person to whom it is given to vote on such matters as shall be authorized by the tenor of such proxy.

But no person shall be permitted to vote in virtue of such proxy unless it has been left for registration at the office of the Bank at least three clear days before the time for holding the meeting at which it is intended to be used

used
Provided that a general proxy which has been registered at such office
need not be again left for registration previous to any subsequent meeting

Proxies existing and in force with reference to any of the present Banks, on the first day of May 1876, shall continue in force and be available at meetings under this Act, anything herein contained notwithstanding

A general power of attorney shall be deemed a proxy within the meaning of this section

Voting by lunatic and minor share holders

Existing

proxies

58. It any proprietor or shareholder is a lunatic or idiot, he may vote by his committee or other legal curator, and if any proprietor or shareholder is a minor, he may vote by his guardian, or any one of his guardians, if more than one

CHAPTER XII

Notices.

Service of notices by Bank. 59. Every notice or other document requiring to be served by the Bank upon any proprietor or shareholder may be served either personally, or by leaving it for, or sending it through the post by registered letter ad dressed to, him at his registered place of abode.

and every notice sent through the post shall be deemed to have been served at the time at which, in the usual course of post, it would have been delivered

Notices by shareholders 60 Any proprietor or shareholder who changes his name or place of abode, or being a female marries, and the husband of any such female, respectively, shall not be entitled to recover any dividend or to vote until notice of the change of name or abode or marriage be given to the Bank, in order that the same may be reinstered

Every notice to be given on the part of any proprietor or all archolder shall be left at the office of the Bank, or sent through the post by registered letter addressed to the Secretary of the Bank at its principal office

Shareholder bound by rotices to previous holder 6° Fvery person who, by operation of law, transfers or otherwise becomes entitled to any stock or shares, shall be bound by any and every notice or other document which previously to his name and address being entered upon the register of the Bank in respect of such stock or shares, has I een given to the person from whom he derives his title thereto.

(Chapter XII -Notices Chapter XIII -Buc laus)

62. When any notice or document is delivered or sent in accordance with Service of this Act, at or to the registered place of abode of a proprietor or shareholder, notices good notwith then, and notwithstanding he be then deceased, and whether or not the Bank, standing have notice of his decease, such service of the notice or other document shall, startholder a death for all purposes of this Act, he deemed service thereof on him or, if dead, on his heirs, executors, administrators, and every of them

CHAPTER XIII

BY F-TANS

63. The directors shall as soon as may be make, and may from time to Power of time alter, bye-laws regulating the following matters or any of them -

make bre-

- (a) the maximum amount which may be advanced or Iflent to or for which lists bills may be discounted for any individual or partnership, without the security mentioned in section 36, paragraph (a), Nos (1) to (5) inclusive, 2 and the extent of the sums to which accounts may be overdrawn without security under the provisions of the last paragraph of section 371.
- (b) the circums ances under which alone advances may be made to direct tors or officers of the Banl , or the relatives of such directors or officers, or to companies, firms or individuals with which or with whom such directors, officers or relatives are connected as partners. directors, managers, servants, shareholders or otherwise.
- (c) the particulars to be contained in the half yearly balance sheet

The directors arm from time to time make bye lay's regulating the following matters or any of them -

- (d) the distribution of business amongst the directors .
- (e) their remuneration .
- (f) the delegation of any powers of the directors to committees consisting of members of their body.
- (g) the procedure at the meetings of the board or of any committee of the directors .
- (h) the books and accounts to be kept at the head and other offices respectively
- (t) the reports and statements to be prepared and made by the chief accountant the heads of deportments and the other officers of the

cant of bil s or atherwise to by . Vol. III.

· im-nt) Act, 1907 (I of 1907)

10L. II.

2 t.

(Chapter XIII - Bye laus Charter XIV - Viscellaneous)

- (1) the management of the branches and agencies,
- (A) the fees payable for certificates of shares or receipts for stock, or for registration of transfers of shares or stock .
- (i) the renewal of certificates of shares and receipts for stock, which have been worn out or lost .

(m) and generally for the conduct of the business of the Bank

Provided that no bye law or alteration or rescission of any bye law, shall be of any validity except in so far as the same is consistent with the provi sions of this Act and has been previously approved by the Governor General in (ouncil and such approval has been signified in writing under the hand of a Secretary to the Government of India

CHAPTER XIV

MISCELI ANFOLS

Power to institute an i compromise

Proviso

Evidence in legal proc eding against shareholdere

64 The directors may institute conduct, defend, compromis, refer to arbi tration and abandon legal and other proceedings and claims by or against the Bank or the directors or officers of the Bank, and otherwise concerning its

affairs 65 In any suit brought against any shareholder to recover any debt due for any call or other moneys due from him in his character of shareholder, it shall be sufficient to allege that the defendant is a shareholder of the Bank, and is indebted to the Bank in respect of a call made or other moneys due, whereby a right to sue has accrued to the Bank .

and on the hearing of any suit brought by the Bank against any shareholder to recover any debt due for any call it shall be sufficient to prove that the name of the defendant is on the register of shareholders of the Bank as the holder of the shares in respect of which such debt accrued and that the call was made, and that notice of such call was duly given to the defendant in pursuance of this or any other Act for the time being in force regulating the Bank

and it shall not be necessary to prove the appointment of the directors who made such call nor that a quorum of directors was present at the Board at which such call was made, nor that the meeting at which it was made was duly convened or constituted

Modification of so two III, sess, o cap 52

Judge of a High Court, to become a member of any corporation established under this Act I over ta

be deemed to render it unlawful for any servant of Government, or for any 67 Notwithstanding anything contained in this 1ct or in section 231 of

66 Nothing in the 33rd of George the Third session 2 chapter 521 shall

¹ The East Ind a Company Act 1"93 (33 Geo 3 c 5") Coll Stat , Ed 1899 Vol I p 49

(Chapter XIV - Wiscellaneous)

Act No X of 1866 whenever the proprietors and shareholders have passed a special resolution that the Bank shall be wound up voluntarily under the Indian Eark under Companies Act 1866 the Bank shall be wound up accordingly, as if it were Companies a Company under that Act

Art.

Provided that no such special resolution shall be deemed to have been passed unless at least one third of the proprietors and shareholders holding at least one half of the paid up capital of the Bank for the time being be present in person or by proxy and a majority poll by open voting in favour of the said resolution and such resolution has been confirmed by a majority of such pro prietors and shareholders at a subsequent special meeting held at an interval of not less than one month nor more than two months from the date of the meeting at which such resolution was first passed

68 And whereas the Government of India has agreed to sell, and the directors of the present Bank of Bengal have agreed to purchase, at a premium of Banks of twenty two and a half per centum, the said two thousand two hundred shares of one thousand rupees each held by the Government of India in the same G vernment and it is intended that the directors of the Bank of Bengal as consti tuted by this Act shall cancel two thousand of such shares, and sell for the benefit of the Bank four hundred shares in the same Bank corresponding with the remaining two hundred shares so agreed to be sold and purchased

Sale to Ben aland Madras of shares therein

And whereas the Government of India has agreed to sell, and the directors of the present Bank of Madras have agreed to purchase, at a premium of ten per centum, the said five hundred and sixty two and a half shares held by the Government of India in the same bank and it is intended that the directors of the Banl of Madras as constituted by this Act shall cancel the same shares ,

And whereas the directors of the present Bank of Madras have purchased Purchase and cancelled other sixty two and a half shares in such Bank ,

And whereas the said respective directors of the present Bank of Bengal by directors and Bank of Madras had no power to enter into the said agreements with the Government of India and the directors of the Bank of Bengal as constituted Bank of by this Act have no power to sell the four hundred shares referred to in this section and the said directors of the present Bank of Madras had no power to purchase and cancel the said other sixty two and a half shares .

and. Cancellation of 624 shares Madras

And whereas the directors of the Bank of Bengal as constituted by this Act have no power to cancel the said two thousand shares and the said directors of the Bank of Madras as constituted by this Act have no power to cancel the said five hundred and sixty two and a half shares,

And whereas it is expedient to confirm the said agreements with the Gov. ernment of India and to indemnify the said respective directors of the present Bank of Bengal and Bank of Madras for entering into the same, and to confirm the said purchase of the said other sixts two and a half shares by the directors

¹ See now the Ind an Con pan es Act 1889 (VI of 1889) General Acts Vol. III a 24 of watch corresponds t a "31 of Ac \ of In

(Chapter XIV -Miscellaneous Schedule)

of the present Bank of Madras and to indemnify the same directors for making the same and for cancelling the same shrees, and to empower the directors of the Bank of Bengal as constituted by this Act to sell the said four hundred shares and to empower the respective directors of the Bank of Bengal and Bank of Madras as constituted by this Act to cuicel the said shares so intended to be cancelled. It is hereby further engated as follows—

Confirmation of agreements with Government

(a) The said agreements with the Government of India are hereby confirmed and the said respective directors of the present Bank of Bengal and Bank of Madras are hereby indemnified for entering into the same, and no suit or other proceeding shall be maintained against any such director in respect of anything bond fide done in pursuance of either of such agreements

Confirmation of purchase of the 62½ shares

(b) The said purchase of the said other sixty two and a half shares is hereby confirmed and the said directors of the present Bank of Madras are hereby indemnified for making the same and for cancelling the same shares, and no suit or other proceeding shall be maintained against any such director in respect of anything bond fide done in effecting such purchase and cancellation

Sale by directors of 400 share in Bank of Bengal (c) The directors of the Bank of Bengal as constituted by this Act shall have power to sell and shall as soon as conveniently may be, sell, the said four hundred shares, either together or in parcels, and either by public auction or private contract, and shall apply the proceeds in or towards paying the price of the shares of the Government of India so agreed to be purchased by the directors of the present Bank as aforesaid, or otherwise for the benefit of the Bank of Bengal as constituted by this Act

Cancells*ion of certain share... (d) The directors of the Bank of Bengal as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said two thousand shares, and the directors of the Bank of Madras as constituted by this Act shall have power to cancel, and shall as soon as conveniently may be cancel, the said five hundred and sixty two and a half shares

SCHEDULE .

(See section 2)

PART I -STATUTE

× 1	1 TE	Abbreviated t tle	Extent of repeal.
	, cab	An Act for the better government of th Settlements of Fort St. Georg; and Bombay, &c	Se tier 8 9 and 10

(Schedule)

PART II -ACTS OF THE GOVERNOR GENERAL IN COUNCIL

Yomber and ve w	Tytle
IV of 1862	An Act for regulating the Bank of Bengal
V of 1862	An Act to provide for the payment at the Banks of Pengal, Madras and Bombay of moneys payable at the General Treasuries of Calcutta, Madras and Bombay
VI of 1862	An Act to annex a schedule to Act IV of 1862
ZXIV of 1803	An Act to declare the receipts of the Banks of Bengal, Madra- and Bombay to be sufficient in lieu of the receipts of the Sub- Treasurers of Fort William, Fort St. George and Bembay, re spectively.
XIX of 1870	An Act to enable the Directors of the Bank of Bergal to act by a quorum

PART III -ACTS OF THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

Number and year	Title	
VI of 1866	An Act for repeal ng Madras Act V of 1802, and for regulating the Bank of Madras	
I of 1871	An Act to smend Madres Act VI of 1806, to give validity to certain acts done by the Directors of the Bank of Madras, and to enable outgoing Directors to be re elected	

PART IV -ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL

Number and year	Title
N of 1863	An Act for the Re-incorporation and Re-constitution of the Bank of Bombas
XV of 1866	An Act to amend Act No X of 1863 (Bombay)
I of 1807	An Ac' to reduce the amount of the capital of the Bank of Bornhay and of the shares thereon, and to amend Act X of 1-63 and Act XV of 1-63 (Rombay)

(Preliminary Distressed Seamen Discharge of Seamen)

ACT No XIII or 1876 1

[29th June 1876]

Preamble.

An Act to amend the law relating to Merchant Seamen.

Whereas it is expedient to amend the law relating to Merchant Seamen in manner hereinafter appearing. It is hereby enacted as follows

Preliminary

Short title
Local extent
Commence
ment
Interpreta
tion clause

1 This Act may be called the Indian Merchant Seamen's Act, 1876 It extends to the whole of British India,

* And it shall come into force at once

2 In this Act "seaman" includes every person (except masters, pilots and apprentices duly indentured and registered) employed or engaged in any capacity to serve at sea for the purposes of any ship

Distressed Seamen

Evidence of distress of seamen.

Penalty for refu ing to

accept Lis

tressed sea

3 A certificate sign of by a Secretary to the Local Government or by such other officer as it appoints in this behalf to the effect that any seeman named therein is distressed shall in all proceedings under sections 211, 212 and 213 17 & of the Merchant Shipping Act 1854; be conclusive evidence that such seams of its distressed within the meaning of the same sections, and any master of a British ship refusing to accept such seaman as a distressed seaman under the provisions of the said sections shall, for each seaman with respect to whom he so refuses be liable to a fine which may extend to one thousand rupees

Discharge of Seamen

Discharge of

4. No seaman or apprentice not shipped in British India shall be discharged without the previous sanction in writing of such officer as the Local Government appoints in this behalf and such sanction shall be given or withheld at the discretion of the officer so appointed, but whenever it is withheld, the reasons for so withholding it shall be recorded by him in writing

Any parion discharging a seamon or apprentice in wilful disobedience to the prohibit ra contained in this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand runees, or to both.

P C a ffl as al Passage at Caratta find a 18" Pt 1 v 101 for

(Engagement of Seamen Deserters Imprisoned Seamen \

Ingagement of Seamen

5 The Local Government or such officer as it appoints in this behalf may, Fraggement by order in writing signed by its Secretary or by such officer prohibit any of Native person from engaging in the territories subject to the said Government, or in any specified portion of such territories any Native of India to serve as a sea man on board any ship specified in such order but in all such cases the reasons for the prohibition shall be stated in writing

Whoever wilfully disobeys the prohibition contained in this section shall be liable to imprisonment for a term which may extend to three months or to fine not exceeding one thousand rupees or to both

Deserters

6 Whenever any seaman or apprentice not shipped in British India deserts Deserter or otherwise absents himself without leave from any ship in which he is engaged to serve the master of the ship shall within forty eight hours of discovering such desertion or absence report the same to such officer as the Local Govern ment appoints in this behalf unless in the meantime the deserter or absentee returns

Any master wilfully neglecting to comply with the provisions of this section may be punished with fine not exceeding one hundred rupces or imprisonment for a term which may extend to one month or with both

Imprisone l Sear en

7 If any seaman or apprentice not shipped in British India is imprisone... for any offence for which he las leen sentenced to imprisonment for a term not imprisoned exceeding one month any Magistrate may deal with him in the same way as seamen in he may deal with a seaman or apprentice imprisoned on any of the grounds accordance with section mentioned in section 88 of Act No I of 18 19 (for the amer dinent of the law relating 88 Act I of to Merclant Seamen) 1

8 If any seaman or apprentice not shipped in British India is imprisoned Rules as to on a complaint made by or on behalf of the master or owner of the ship in which imprisoned he is engaged to serve on any of the grounds mentioned in the said Act No I of 1859 section 88 or for any offence for which he has been sentenced to im prisonment for a term not exceeding one month the following rules shall be observed -

(a) no person shall while such uni risonment lasts without the previous sanction in writing of the Local Covernment or of such off cer as it appoints in this behalf engage any \ative of India to serve as a sea man on board such ship.

¹ Short t the The Ind an Merchant Sh plung let 1 9 (I of 15, ") General Acts lol L

[1876: Act XIII]

(Imprisoned Seamen

Accommodation of Seamen Meaning of 'established par value ')

(b) the Local Government or such officer as it appoints in this behalf, may tender such seam in or apprentice to the master or owner of the ship in which he is engaged to serve and if such master or owner, without assigning tensons satisfactory to the Local Government or to such officer as aforesaid, refuse to receive him on board may require such master or owner to deposit in the local Shipping Office (1) the wages due to such seaman or apprentice and his money, clothes and other effects, and (2) such sum as may in the opinion of the Local Government or of such officer as aforesaid be sufficient to defray the cost of the passage of the said seaman or apprentice to the port at which he was shapped according to the scale of cost usual in the case of distressed seamen

Whoever wilfully disobeys the prohibition contained in clause (a) of this section shall be liable to imprisonment for a term which may extend to three months or to fine not exceeding one thousand rupees or to both

Any master or owner refusing or neglecting to deposit such wages money, clothes and other effects or such sum as aforesaid may be punished with fine not exceeding five hundred rupees and in default of payment of such fine I [with imprisonment] for a term which may extend to three months

Accommodation of Seamen

Amendment of Act I of 1859 erction

9 And whereas it is expedient to increase the space required by the said Act No I of 1859, section 70, to be allowed for European seamen and appren tices and for lascars or Native seamen. It is hereby further enacted as follows ---

Such section shall be read as if for the expressions " nine superficial feet," "fifty four cubic feet" and "four superficial feet" the expressions "ten superficial feet " " sixty cubic feet " and " six superficial feet " were respect ively substituted and as if, in the third paragraph of the same section, after the word " superficial " the words " and thirty six cubic " were inserted.

Meaning of "established par value"

Mean no of express on estab ished Act I of 1959 sect on 54

10 And whereas doubts have been raised as to the meaning of the expression "established par value" in the said Act No I of 1859 2 section 54, for par value in the purpose of removing such doubts. It is hereby enacted as follows

For section 54 of Act No I of 1859, the following shall be substituted (that is to say)

"54 When any moneys are payable in India to any seaman or apprentice for wages or otherwise under any agreement wherein such moneys are expressed

by the Repealing and 1 Th se wor is were substituted for the words to imprisonment Amen ling let 1891 (MI of 1891) General lets Vol. II 2 General Acts, Vol I

1876 Act XVI 7

Stage Carriages

to be payable in British currency the seaman or apprentice shall be entitled to demand and recover in the current coin of India the amount due to him esti mated according to the rate of exchange for the ime being fixed by the Secre tary of State for India in Council with the concurrence of the Lords Commis signers of Her Majesty's Treasury for the adjustment of financial transactions between the Imperial and the Irdian Governments '

ACT NO XVI or 1876 I

5th October 1876 1

An Act to amend the Stage Carriages Act

Where As Act No XVI of 1861 (for licensing and regulating Stage Carriages)2 Preamble does not apply to carriages drawn by camels or oven and it is expedient to render it applicable to such carriages. It is hereby enacted as follows -

- 1 For the third sentence of section 21 of the said Act the following shall Amendment of Act YVI be substituted (that is to say) of 1861 a 21.
- "All expressions and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India
- 2 [Local extent of 4ct \ VI of 1861] Rep by the Stage Carriages Act (1861) Amendment 4ct 1898 (I of 1898)

1 Short tile The Stage Carrages Act (1861) An endment Act 18 6 See the Indian Short Tiles Act 1897 (XIV of 1897) General Acts Vol IV

For the Statement of Objects and Reason see Gazette of Ind a 18 6 Pt. V p 55° for Pro

the The wa.

As being part of Act XVI of 1861 this Act is allo in force in the North Western Provinces Tara see fret foot note under that Act General Act. Vol. I *Short t tle Tile Stage Carring. Act 1561 (XVI of 1 Jl) General Acts Vol. I

ACT No XIX of 18761

(16th December 1876 1

10m2 77 T - 24"

An Act for the better control of public dramatic performances.

Preamble

Short title

WHREAS it is expedient to empower the Government to prohibit public diamatic performances which are scandalous, defamatory, seditious or obscene, It is hereby enacted as follows—

1. This Act may be called the Dramatic Performances Act, 1876 It extends to the whole of British India.

And it shall come into force at once

- 2. In this Act "Magistrate" means in the Presidency-towns, a Magistrate of Police, and elsewhere the Magistrate of the district
- 3. Whenever the Local Government is of opinion that any play, pantomime or other drama performed or about to be performed in a public place is—
 - (a) of a scandalous or defamatory nature or
 - (b) likely to excite feelings of disaffection to the Government established by law in British India, or
 - (c) likely to deprave and courupt persons present at the performance,

the Local Government, or outside the Presidency towns and Rangoon the Local Government or such Magistrate as it may empower in this behalf may by order prohibit the performance

Frplanation —Any building or enclosure to which the 1 ublic are admitted to witness a performance on payment of money shall be deemed a "public place" within the meaning of this section

4. A copy of any such order may be served on any person about to take part in the performance so prohibited, or on the owner or occupier of any house, room or place in which such performance is intended to take place, and any person on whom such copy is served, and who does, or willingly permits, any act in disobedience to such order, shall be punished on conviction before a Magistrate with imprisonment for a term which may extend to three months,

or with fine, or with both

5. Any such order may be notified by proclamation, and a written or printed notice thereof may be stuck up at any place or places adapted for giving information of the order to the persons intending to take part in or to witness the performance so prohibited

Commence ment. "Magretrate" defined Power to prohibit certain dra

matic per formances

Local extent

Power to serve order of prohibi tion. Penalty for disobeying order

Power to notify order

It has with modifications and with the exception of a 12 been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act 1908 (XIII of 1898) s. 4 (1) and Sch. I. Bur Code

6. Whoever after the notification of any such order-

(a) takes part in the performance prohibited thereby or in any perform-

ance substantially the same as the performance so prohibited, or (b) in any manner assists in conducting any such performance, or

(c) is in wilful disobedience to such order present as a spectator during the whole or any part of any such performance or

(d) being the owner or occupier or having the use of any house, room or place opens keeps or uses the same for any such performance, or permits the same to be opened, kept or used for any such perform.

shall be nunishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both

7. For the purpose of a certuining the character of any intended public Power to dramatic performance, the Local Government or such officer as it may specially information. empower in this behalf may apply to the author, proprietor or printer of the drama about to be performed, o to the owner or occupier of the place in which it is intended to be performed, for such information as the Local Government or such officer thinks necessary

Penalty for disobeying

prohibition

Every person so applied to shall be bound to furnish the same to the best of his ability, and whoever contravenee this section shall be deemed to have committed an offence under section 176 of the Indian Penal Code 1

8. If any Magistrate has reason to believe that any house, room or place Power to is used, or is about to be used for any performance prohibited under this Act, grant war he may, by his warrant, authorize any officer of Police to enter with such assis. Police to tance as may be requisite, by night or by day, and by force if necessary, any enter and such house, room or place, and to take into custody all persons whom he finds seize therein, and to seize all scenery, dresses and other articles found therein and reasonably suspected to have been used, or to be intended to be used, for the purpose of such performance

9. No conviction under this Act shall bar a prosecution under section 1244 Saving of or section 294 of the Indian Penal Cole 1

prosecutions Penal Code. ections 124 A unier

10. Whenever it appears to the Local Government that the provisions of Power to this section are required in any local area, it may, with the sanction of the dramatic Governor General in Council, declare, by notification in the local official Gazette, performance that such provisions are applied to such area from a day to be fixed in the area except netification

On and after that day, the Local Government may order that no dramatic performance shall take place in any place of public entertainment within such area, except under a license to be granted by such Local Government, or such officer as it may specially empower in this behalf

ACT NO XIX OF 1876 I

[16th December 1876]

An Act for the better control of public dramatic performances.

Preamble
Short title

Local extent

" Magatrate"

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(b) likely to excite feelings of disaffection to the Government established by law in British India. or

(c) likely to deprave and corrupt persons present at the performance,

the Local Government, or outside the Presidency towns and Rangoon the Local Government or such Magnitrate as it may empower in this behalf, may by order prohibit the performance

Frplanation—Any building or enclosure to which the public are admitted to witness a performance on payment of money shall be deemed a "public place" within the meaning of this section

Power to serve order of prohibit tion. room of Penalty for disobeying order order act in

4. A copy of any such order may be served on any person about to take part in the performance so prohibited, or on the owner or occupier of any house, room or place in which such performance is intended to take place, and any person on whom such copy is served, and who does or willingly permits, any act in disobedience to such order, shall be punished on conviction before a Magistrate with impresonment for a term which may extend to three months, or with fire, or with both

Power to notify order 5. Any such order may be notified by proclamation, and a written or printed notice thereof may be stuck up at any place or places adapted for giving information of the order to the persons intending to take part in or to witness the performance so prohibited

~~~ " p 317, for

ts Act. 1874

tum and the 501 The which was szette, 1890,

Pt I p 44
It has with modifications and with the exception of s 12, been declared in force in Upper
Burma generally (except the Shan States), by the Burma Laws Act, 1893 (XIII of 1898) s. 4
(I) and Sch I. Bur Code

6. Whoever after the notification of any such order-

Penalty for disobeying prohibition

- (a) takes part in the performance prohibited thereby or in any performance substantially the same as the performance so prohibited, or
- (b) in any manner assists in conducting any such performance, or
- (c) is in wilful disobedience to such order present as a spectator during the whole or any part of any such performance or
- (d) being the owner or occupier, or having the use of any house room cr place opens keeps or uses the same for any such performance, or permits the same to be opened, kept or used for any such perform-

shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months or with fine, or with both

7. For the purpose of a certaining the character of any intended public Power to dramatic performance, the Local Government or such officer as it may specially information empower in this behalf may apply to the author, proprietor or printer of the drama about to be performed, o, to the owner or occupier of the place in which at is intended to be performed for such information as the Local Government or such officer thinks necessary

Every person so applied to shall be bound to furnish the same to the best of his ability, and whoever contravener this section shall be deemed to have f 1860 committed an offence under section 176 of the Indian Penal Code 1 8. If any Magistrate has reason to believe that any house, room or place Power to

is used, or is about to be used for any performance prohibited under this Act, rant to he may, by his warrant authorize any officer of Police to enter with such assis. Police to tance as may be requisite, by night or by day and by force if necessary, any enter and such house room or place and to take into custody all persons whom he finds seize therein, and to seize all scenery dresses and other articles found therein and reasonably suspected to have been used or to be intended to be used, for the

purpose of such performance 9. No conviction under this Act shall bur a prosecution under section 124A Saving of #1860 or section 294 of the Indian Penal Cole 1

10. Whenever it appears to the Local Government that the provisions of Power to this section are required in any local area, it may, with the sanction of the probibit Governor General in Council declare, I v netification in the local official Gazette, performance that such provisions are applied to such area from a day to be fixed in the netification

On and after that day, the Local Government may order that no dramatic performance shall take place in any place of public entertainment within such area, except under a heense to be granted by such Local Government, or such officer as it may specially empower in this behalf

Penal Code. sections 1°4 n any local area, except under license

prosecutions

Powers

exerciseable

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ances at religious fest vals

by Governor General Specific Relief

[1877 Act I.

The Local Government may also order that no dramatic performance shall take place in any place of public entertrumment within such area unless a copy of the piece if and so far as it is written or some suffice and account of its purport if and so far as it is in pantomime has been furnished, not less than three days before the performance, to the I ocal Government, or to such officer as it may appoint in this behalf

A copy of any order under this section may be served on any keeper of a place of public entertainment and if thereafter he does or willingly permits any act in disobedience to such order he shall be punishable on conviction be fore a Magistrate with imprisonn ent for a term which may extend to three months or with fine or with both

11. The powers conferred by this Act on the I ocal Government may be exercised also by the Governor General in Council

112 Nothing in this Act applies to any pairas or perfo mances of a like kind at religious festivals

# THE SPECIFIC RELIEF ACT, 1877

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<sup>1</sup> The section does not apply to Upper Burma see the Purma Laws Act 1898 (XIII of 1899) a 4 (1) and Sch 1 Pur Code

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#### SCHEDULE

(ENACTUENTS REPEALED )

Repealed

Specific Relief (Part I -Preliminary)

# ACT NO LOF 1877 1

17th February 1877

1087 Dt T - 600

An Act to define and amend the law relating to certain kinds of Specific Relief

WHEREAS It is expedient to define and amend the law relating to certain Preamble kinds of specific relief obtainable in civil suits. It is hereby enacted as follows -

# PART I PRELIMINARY.

1 This Act may be called the Specific Relief Act 1877

Short title.

1 For the Statement of Objects and Reasons see Gazette of Ind a 1875 Pt V p %8 the Report of the Select Comm tree see shed 1870 Pt V p 1445 for discussions in Council see th d 18 5 Supplement pp 981 and 10°0 that 1876 Supplement p 1284 and that 1877 Supplement p 177

This Act has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act 1898 (XIII of 1893) is 4 (1) and Sch I see Bur Code It has been extended by not ficat on under s 5 of the Scheduled D str cts Act 1874 (XIV of 1874) supra to the following Sched led Districts namely -

the Sciel led D strets of the Punjab See Gazette of India 1877 Pt I p. 56° the Districts of Kamrup Saugong

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# (Part I - Preliminary Part II -Of Specific Relief Chapter I -Of recovering Possession of Property

- 4 Except where it is herein otherwise expressly enacted nothing in this Savings. Act shall be deemed-
  - (a) to give any right to relief in respect of any agreement which is not a
  - (b) to deprive any person of any right to relief other than specific per formance which he may have under any contract, or
  - (c) to affect the operation of the Indian Registration Act, on documents
  - 5 Specific relief is given—

Specific relief how given

- (a) by taking possession of certain property and delivering it to a claimant.
- (b) by ordering a party to do the very act which he is under an obligation (c) by preventing a party from doing that which he is under an obligation
- not to do.
- (d) by determining and declaring the rights of parties otherwise than by an award of compensation, or
- (e) by appointing a receiver

6 Specific relief granted under clause (c) of section 5 is called preventive Preventive

relief 7 Specific relief cannot be granted for the mere purpose of enforcing a Relief not penal law

granted to enforce penal

# PART II.

# OF SPECIFIC RELIEF.

#### CHAPTER I

# OF RECOVERING POSSESSION OF PROPERTY

#### (a) Possession of Immoreable Property

8 A person entitled to the possession of specific immoveable property may Precovery of recover it in the manner prescribed by the Code of Civil Procedure 1

unmoveable property projecty

2 9 If any person is dispossessed without his consent of immoveable Suit by perproperty otherwise than in due course of law, he or any person claiming son disposthrough him may, by suit\* \* \* \* 3 recover possession thereof, notwith. immoreable standing any other title that may be set up in such suit

<sup>1</sup> See now the Code of Civil Procedure 1905 ( Act 1 of 1905) General Acts Vol. VI 2 But see as to tenanc es in the Punjab the Punjab Tenancy Act 1887 (TVI of 1887) a. 51. P and \ W Code.

<sup>3</sup> The words " inst tuted within a x months from the date of the disposess on were repealed by the Repealing and Amending Set 1991 (XII of 1891).

(Part II -Of Specific Relief Chapter I -Of recovering Possession of Property )

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof

No suit under this section shall be brought against the Government

No appeal shall lie from any order or decree passed in any suit instituted under this section nor shall any review of any such order or decree be allowed

# (b) Possession of Moveable Property

Recovery of apecific. moveable property

10 A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure 1

EXPLANATION 1 -- A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled

EXPLANATION 2 -A special or temporary right to the present possession of property is sufficient to support a suit under this section

#### Illustrat one

" 1 Jes B enters on the land Ŀ may recover then from C f them before he is entitled oan sues B for possession their possession whatever right he may have to secure their sale custody

. .

caused by its loss .

(c) A rece ves a letter addressed to him by B B gets back the latter without A s consent A has such a property therein as entitles him to recover it from B (d) A deposits books and papers for safe custody with B B loses them and C finds them

rtain goods to Z which B

Liability of DOTSOR IG posses ion not as owner to deliver to DCF50D entitled to Immeliate

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11 Any person having the possession or control of a particular article of moveable property of which he is not the owner, may be compelled specifi cally to deliver it to the person entitled to its immediate possession in any of the following cases -

- (a) when the thing claimed is held by the defendant as the agent or trustee of the claimant .
- ---- 11 --- offord the claimant adequate **(b)**
- scertain the actual damage (c)

<sup>1</sup> See now the Code of Civil Procedure 1908 (Act V of 1908) Ceneral Acts Vol VI 2 Supra

(Part II —Of Specific Relief Chapter I —Of recovering Possession of Property Chapter II —Of the Specific Performance of Contracts)

(d) when the possession of the thing claimed has been wrongfully transformed from the claimant

#### Illustrations-

#### of clause (a)-

A proceeding to Europe leaves his furniture in charge of B as his agent during his absence B without A s subnorty indeges the furniture to C and C knowing that B had no right to pledge the furniture advertises it for sale C may be compelled to deliver the furniture to A, for he holds it as A & trust.

#### of clause (h)\_

Z has got possession of an idol belonging to A s family and of which A is the proper cus todian. Z may be compelled to deliver the idol to A

# of clause (c)—

A is entitled to a picture by a dead painter and a pair of rare China vases  $\,B$  has possession of them. The articles are of too special a character to bear an ascertainable market value  $\,B$  may be compelled to deliver them to  $\,A$ 

#### CHAPTER II

#### OF THE SPECIFIC PERFORMANCE OF CONTRACTS

- (a) Contracts which may be specifically enforced
- 12 Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced
  - y contract may in the discretion of the Court be enforced—

    [a] when the act agreed to be done is in the performance, wholly or partly,

    of a trust.
  - (b) when there exists no standard for ascertaining the actual damage caused by non performance of the act agreed to be done.
  - (c) when the act agreed to be done is such that pecuniary compensation for its non performance would not afford adequate relief, or
  - (d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done

Explanation —Unless and until the contrary is proved, the Court sha'l presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved

# Illustrations-

- of clause (a)—
- 1 A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates
- 1 This Illustration is repealed wherever the Ind an Trusts Act, 1882 (II of 1852), is in force—see Act II of 1882 as, 1 and 2, Ceneral Acts, Vol. 11L

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534

(Part II -Of Specific Relief Chapter II -Of the Specific Performance of Contracts )

an obligation on A to restore the same quantity of stock to B and B may enforce specific per formance of this obligation. of clause (b)-

A agrees to buy and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract for there is no standard for ascertaining the actual damage which would be caused by its non performance

of clause (c)-

A contracts with B to sell him a house for Rs 1000 B is entitled to a decree directing

for his interest in its performance cannot be adequately compensated for by money and the Court may appoint a proper person to superintend the construction of the archway road, siding and wharf . --

1 000

of clause (d)-

A transfers without endorsement but for valuable consideration a promissory note to B A becomes insolvent and C is appointed his ass guee B may compel C to endorse the note for C has succeeded to As liabilities and a decree for pecuniary compensation for not endorsing the note would be fruitless

13 Notwithstanding anything contained in section 56 of the Indian IX of Contract Act,1 a contract is not wholly impossible of performance because a portion of its subject matter, existing at its date has ceased to exist at the time of the performance

Illustrat o \*

(a) A contracts to sell a house to B for a lakh of rupees The day after the contract is made the house is destroyed by a cyclone. B may be compelled to perform his part of the contract

by paying the purchase-money
(a) In consuleration of a sum of money payable by B A contracts to grant an annuity to
(B) or B slife. The day after the contract has been made B is thrown from his horse and killed. B s representative may be compelled to pay the purchase-money

14 Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed and award compensation in money for the deficiency

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exist.

(Part II -Of Specific Relief Chapter II -Of the Specific Performance of Contracts \

#### Illusten stres-

(a) A contracts to sell B a piece of land consisting of 100 highes It turns out that 98 highes of the land belong to A and the two remaining bigh a to a stranger who refuses to part with them. The two highes are not necessary for the use or enjoyment of the 98 high s nor so im

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part of con tract where

15 Where a party to a contract is unable to perform the whole of his part Spreise [er of it and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of large his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant

### Rustrations

of the purchase-money

(b) A contracts to sell to B an estate with a house and garden for a lakh of rupees.

independent contract.

16. When a part of a contract which, taken by itself, can and ought to Specific per be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically part of performed, the Court may direct specific performance of the former part

> caws of stecific perior mance of part of contract.

17. The Court shall not direct the specific performance of a part of a contract Bar in other except in cases coming under one or other of the three last preceding sections

(Part II -Of Specific Relief Chapter II -Of the Specific Performance of Contracts \

Porch, ser's rights agas st vendor wthin perfect title

- 18. Where a person contracts to sell or let certain property, having only an imperfect title thereto the purchaser or lessee (except as otherwise provided by this Chapter) has the following rights -
  - (a) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property the purchaser or lessee may compel him to make good the contract out of such interest.
  - (b) where the concurrence of other persons is necessary to validate the title and they are bound to convey at the vendor s or lessor's re quest the purchaser or lessee may compel him to procure such con currence.
  - (c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee,
  - (d) where the vendor or lessor sues for specific performance of the con tract and the suit is dismissed on the ground of his imperfect title the defendant has a right to a return of his deposit (if any) with interest thereon to his costs of the suit and to a lien for such deposit interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let

Power to au and com per sation in certain cases

19 Any person suing for the specific performance of a contract may also ask for compensation for its breach either in addition to or in substitution for, such performance

If in any such suit the Court decides that specific performance ought not to be granted but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach it shall award him compensation accordingly

If in any such suit the Court decides that specific performance ought to be granted but that it is not sufficient to satisfy the justice of the case and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly

Compensation awarded under this section may be assessed in such manner as the Court may direct

EXPLANATION -The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section

### Illustrations-

(Part II .- Of Specific Relief Chapter II - Of the Specific Performance of Contracts \

contract and has broken it without excuse to the injury of B but that specific performance is not the proper remedy It shall award to B such compensation as it deems just

### of the third paragraph-

A contracts with B to sell him a house for Rs 1 000 the price to be paid and the posses sion given on the 1st January 1877 A fals to perform his part of the contract and B brings his suit for specific performance an 1 compensation which is decided in his favour on the 1st January 1878 The decree may besides ordering specific performance award to B compensation for any loss which he has sustained by A a refueal.

#### of the Lyplanation-

A a purchaser sues B his vendor for spec fic performance of a contract for the sale of a patent Before the hearing of the suit the patent expires The Court may award A compensation for the non performance of the contract and may if necessary amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the D rectors of a public com pany under which he was entitled to have a certain number of al ares allotted to him and for compensat on for the non performance of the resolution. All the slares had been allotted before the inst tution of the suit The Court may, under this section award A compensation for the non performance

20. A contract, otherwise proper to be specifically enforced may be thus Liquidation enforced though a sum be named in it as the amount to be paid in case of its not a bar to breach and the party in default is willing to pay the same

specific per formance.

Contracts

#### Illustration

y held by A under C and that he will under lease and that if the l cense is apply for the license and offers to pay the contract specifically enforced if C

consents to give the license

## (b) Contracts which cannot be specifically enforced

- 21 The following contracts cannot be specifically enforced -

not speci. (a) a contract for the non performance of which compensation in money is fically en an adequate relief,

- (b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volution of the parties or otherwise from its nature, is such, that the Court cannot enforce specific performance of its material terms .
- (c) a contract the terms of which the Court cannot find with reasonable certainty ,
- (d) a contract which is in its nature revocable.
- (e) a contract made by trustees either in excess of their powers or in breach of their trust ,
- (f) a contract made by or on behalf of a corporation or public company created for special purposes or by the promoters of such company which is in excess of its powers,

(Part II -Of Specific Relief Chapter II -Of the Specific Performance of Contracts)

- (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date,
- (h) a contract of which a material part of the subject-matter, supposed by both parties to exist has, before it has been made, ceased to exist.

And save as provided by the Code of Civil Procedure, 1 2[and the Indian Arbitation Act 1899,] no contract to refer 3 [present or fature differences] to arbitation shall be specifically enforced, 4but if any person who has made such a contract and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

#### Illustrations-

#### to (a)-

A contracts to sell and B contracts to buy a lakh of rupees in the four per cent loan of the Covernment of India A contracts to sell and B contracts to buy, 40 chests of md go at Rs 1000 per

cuest In consideration of certain property having been transferred by A to B B contracts to open a credit in As favour to the extent of Rs 10000 and to bonour As drafts to that amount

The above contracts cannot be specifically enforced for in the first and second both A and B, and in the third A would be reimbursed by compensation in money

### to (b)-

A contracts to render personal service to B.

A contracts to en ploy B on personal service

A, an author, contracts with B a publisher to complete a literary work.

Beannot enforce specific performance of these contracts. A contracts to buy B a business at the amount of a valuation to be made by two valuers one to be named by A and the other by B \ 1 and B each name a valuer, but before the valuation is made A instructs his valuer not to proceed.

A lets land to D and D contracts to be 198 viv a 8 per cure mount house 1 let em. 16. 8

next after the date of the lease

A and B contract that in consideration of annual advances to be made by A, B will
for three versa next after the date of the contract grow particular crops on the land in his

possession and deliver them to A when cut and ready for delivery
A contracts with B that, in consideration of Ps. 1 000 to be paid to him by B he will
paint ap cture for B

A contracts with B to execute certain works which the Court cannot superintend

<sup>&</sup>lt;sup>1</sup> See now the Code of Civ I Procedure 1009 (Act V of 1908) General Acts Vol. VI. <sup>2</sup> These words were userted by the Ind an Arb trat on Act, 1899 (IX of 1899) a. 21, General Acts Vol. V

<sup>&</sup>lt;sup>3</sup> These words were subst tuted for the words 's acontroversy by \$b1' 4. The last thirty seren words of a. 21 do not apply to any subm so nor arbitration to which the provisions of the Indian Arbitration Act 1809 for the time being apply, see Act 1X of 1809 a. 5 Ceneral Acts 10.1.

(Part II -Of Specific Relief Chapter II -Of the Specific Performance of Contracts )

A contracts to supply B with all the goods of a certain class which B may require
A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, 'if the drawing room is handsomely decorated even if it is held to have so much certainty that compensation can be recovered for its breach

A contracts to marry B

1877 : Act I.7

The above contracts cannot be specifically enforced

#### to (c)-

A, the owner of a refreshment room contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance. the amount and nature of the accommodation and appliances being undefined.

## to (d)-

A and B contract to become partners in a certain business the contract not specifying the doration of the proposed partnership. This contract cannot be specifically performed for it were so performed, either A or B might at once dissolve the partnership

#### to (e)-

A is a trustee of land with power to lease it for seven years. He enters into a contract renew the lease at

> nction of a general nnot be specifically

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enforced

value of such property-and in fact agree to pay an extravagant price therefor They also stijulate that the vendors shall give them a bonus out of the purchase-money This contract cannot be specifically enforced.

### to (f)-

A company existing for the sole purpose of making and working a railway contract for the purchase of a piece of land for the purpose of erecting a cotton mill thereon. This contract cannot be specifically enforced.

to (q)-

of this contract must be refused to B

#### to (h)---

A contracts to pay an annuity to B for the lives of C and D. It turns out that at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract can not be specifically performed.

### (c) Of the Discretion of the Court

22 The jurisdiction to decree specific performance is discretionary, and the Discretion Court is not bound to grant such relief merely because it is lawful to do so : as to decree (Part II.-O) Specific Relief Chapter II -O) the Specific Performance of Contracts)

ing specific performance but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal

The following are cases in which the Court may properly exercise a discretion not to decree specific performance

I Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part

#### 1Uustrations

floods, it is necessary for its owner to maintain an expensive embankment. B. does not know of this encumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

II Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff

#### Illustrations

ting the condition that if he sells it within ting the condition, contracts,

C. Here the enforcement i not compel its specific per

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to sell the trust-estate to D, ances to which it is subject.

The purchase money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendor believed it to be sufficient. Specific performance of the contract should be refused to 19.

(Part II -Of Specific Relief Chapter II -Of the Specific Performance of Contracts \

the mines and that he shall have the articles specified in his notice delivered to him at a valua tion on the expury of the lease Such a contract might be most injurious to the lessee a busi ness and enceife performance f it should be refered to B

(j) A contracts to buy certain land from B The contract is silent as to access to the land he right of way to it can be shown to exist Specific performance of the contract should be

(1) A contracts with B to buy from Bs manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court can not compel B to supply the goods but if he does not supply the mA may be runed unless he is allowed to buy them elsewhere. Special contracts the contract of the co fic performance of the contract should be refused to B

The following is a case in which the Court may properly exercise a discretion to decree specific performance -

III Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance

#### Mustration

A sells land to a railway company who contract to execute certain works for his con-venience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A

# (d) For whom Contracts may be specifically enforced

23 Except as otherwise provided by this Chapter, the specific performance Who may of a contract may be obtained by-

obta navecifie performance

(a) any party thereto,

- (b) the representative in interest or the principal, of any party thereto provided that where the learning skill, solvency or any personal quality of such party is a material ingredient in the contract or where the contract provides that his interest shall not be assigned his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed,
- (c) where the contract is a settlement on marriage or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder .
- (d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman,
- (e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant .
- (f) a reversioner in remainder, where the agreement is such a covenant and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach ,
- (g) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation.

(Part II -Of Specific Relief Chapter II -Of the Specific Performance of Cortracts)

#### Illustrations

(a) A B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs 1000 In a suit by D to make A, B and C separately liable each to the extent of Rs 1000 they prove that the word each was inserted by mivitake that the intention was that they should give a joint bond for Rs 1000 D can obtain the performance sought only with the variation thus set up

(b) A sues B to compel specific performance of a contract in writing to buy a dwelling house B proves that he assumed that the contract included an adjoining yard and the contract was

absolute ownership on B The contract so framed cannot be specifically enforced.

in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

Relief against par ties and per sons claiming under them by subse quent title

## (g) Against whom Contracts may be specifically enforced

27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

- (a) either party thereto
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract,
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant
- (d) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation,
- (e) when the promoters of a public company have, before its incorpora tion, entered into a contract, the company provided that the com pary has ratified and adopted the contract and the contract is warranted by the terms of the incorporation

#### Illustrations-

#### to clause (6)-

A contracts to convey certain land to B by a particular day A dies intestate before that day without having conveyed the land B may compel As heir or other representative in in terest to perform the contract specifically

(Part II -Of Specific Relief Chapter II -Of the Specific Performance of Contracts \

A contracts to sell certain land to B for Rs 5 000 A afterwards conveys the land for Rs 6 000 to C. who has notice of the original contract B may enforce specific performance of the contract as against C

A contracts to sell land to B for Rs. 5 000 B takes possession of the land Afterwards

to clause (c)-

(h) Against whom Contracts cannot be specifically enforced

28 Specific performance of a contract cannot be enforced against a party What parties thereto in any of the following cases -

cannot be compelled (a) if the consideration to be received by him is so grossly inadequate to perform.

- with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circum stances evidence of fraud or of undue advantage taken by the plaintiff, (b) if his assent was obtained by the misrepresentation (whether wilful or
- innocent) concealment, circumvention or unfair practices, of any party to whom performance would become due under the contract. or by any promise of such party which has not been substantially fulfilled .
- (c) if his assent was given under the influence of mistake of fact, misapprehension or surprise Provided that when the contract provides for compensation is case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced

#### Illustrationsto c ause (c)-

\ no of two executors in the erroneous belief that he had the authority of his co-execu re into an agreement for the sale to B of his testator a property B cannot insist le ng completed.

s an auction er to sell certain land. A afterwards revokes the auctioneer a authority of this land but the auctioneer madvertently sells the whole to B who has not cocation B cannot enforce specific performance of the agreement.

(Part II .- Of Specific Relief. Chapter II -Of the Specific Performance of Contracts )

ing specific performance but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal

The following are cases in which the Court may properly exercise a discretion not to decree specific performance

I Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part

### Illustrations

(a) A a topant for I fe of corts a mean sta

be refused to B

floods, it is necessary for its owner to maintain an expensive embankment B does not know of this circumstance, and A conceals it from him Specific performance of the contract should

(d) A s property is put up to auction B requests C, As attorney, to bid for him C does this inadvertently and in good faith. The persons present, seeing the vendor sattorney bidding, think that he is mere poffer and cass to compete The lot is knocked down to B at a low price Specific performance of the contract should be refused to B

II Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non performance would involve no such hardship on the plaintiff

#### Illustrations.

the steamle twitten fet t a me at 1 a

formance in favour of C.

(f) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally serve to concrete the estate from heavy incumbrances to which it is subject. The purchase money is not nearly enough to discharge those mountrances, though at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D

(f) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its foundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to B unless he waites his claim to the unknown property.

(f) A contracts with B to sell him certain land, and to make a road to it from a certain rail.

(Part II -Of Specific Relief Chapter II -Of the Specific Performance of Contracts \

the mines and that I e shall have the articles specified in h s notice delivered to him at a value tion on the expiry of the lease Such a contract might be most injurious to the leases a busi

tion on the expary of the search mess and specific performance if it should be refused to B. A contracts to buy certain land from B. The contract's silent as to access to the land ho right of way to it can be shown to exist. Specific performance of the contract should be

(i) A contracts with B to buy from B s man factory and not elsewhere all the goods of a certain class used by \( \) in his trade. The Court cannot compel B to supply the goods but if he does not sipply them A may be runned unless is a sallowed to buy them elsewhere. Spec fine performance of the contract should be reduced to B

The following is a case in which the Court may properly exercise a discretion to decree specific performance -

III Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance

#### Dustratio

A sells land to a railway company who contract to execute certain torks for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decree I in favour of A

## (d) For whom Contracts may be specifically enforced

23 Except as otherwise provided by this Chapter the specific performance Who may of a contract may be obtained by -

obta nepere performance

ż

(a) any party thereto

- (b) the representative in interest or the principal of any party thereto. provided that where the learning skill solvency or any personal quality of such party is a material ingredient in the contract or where the contract provides that his interest shall not be assigned his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed.
- (c) where the contract is a settlement on marriage or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder,
- (d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman,
- (e) a reversioner in possession where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant,
- (f) a reversioner in remainder where the agreement is such a covenant and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach .
- (a) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation,

(Part II -Of Specific Relief Chapter II -Of the Specific Performance of Contracts \

- (h) when the promoters of a public company have, before its incorpora tion, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company
  - (e) For whom Contracts cannot be specifically enforced
- Personal bars to the relief 24 Specific performance of a contract cannot be enforced in favour of a person-
  - (a) who could not recover compensation for its breach.
  - (b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed,
  - (c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract, or
  - (d) who, previously to the contract had notice that a settlement of the subject matter thereof (though not founded on any valuable consideration) had been made and was then in force

### Illustrations

to clause (a)-

A, in the character of agent for B, enters into an agreement with C to buy C a house. A is in reality acting not as agent for B but on his own account. A cannot enforce specific per formance of this contract,

to clause (b)-

A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his as s gaee can enforce specific performance of the contract

den - -- h ah there are ornamental trees a material A without B a consent, fells the trees.

> se commits waste or treats the land in performance of the contract.

## to clause (c)-

A contracts to let and B contracts to take a house for a specified term at a specified ren., B refuses to perform the contract A thereupon sues for and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

- 25 A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor-
  - (a) who, knowing himself not to have any title to the property, has contracted to sell or let the same ,
  - (b) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties

Contracts to sell property lvonevlo has no title or who is a voluntary rettler

(Part II -Of Specific Relief Chapter II -Of the Specific Performance of Contracts )

> or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt

(c) who, previous to entering into the contract has made a settlement (though not founded on any valuable consideration) of the subject matter of the contract

#### Illustrations

(a) A, without C s authority contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract even though C is willing to confirm

(b) A bequeathy his land to trustees declaring that they may sell it with the consent in writing of B B gives a general prospective assent in writing to any sale which the trustees the law

> On enquiry it turns out s before and is generally A cannot compel Z speci -+ - - - - t- - L l-

(f) For whom Contracts cannot be specifically enforced, except with a Varia-

26 Where a plaintiff seeks specific performance of a contract in writing, \on-enforceto which the defendant sets up a variation, the plaintiff cannot obtain the ment except with ratio. performance sought, except with the variation so set up, in the following cases tion, (namely) -

- (a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it .
- (b) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff .
- (c) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepre sentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil .
- (d) where the object of the parties was to produce a certain legal result. which the contract as framed is not calculated to produce .
- (c) where the parties have, subsequently to the execution of the contract. contracted to vary it

(Part II -Of Specific Relief Chapter II -Of the Specific Performance of Cortracte)

#### Illustrations

(a) A B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs 1000 In a s it by D to make A B and G separately liable each to the extent of Rs 1000 they prove that the word each was inserted by mistake that the intention was that they should give a joint bond for Rs. 1000 D can obtain the performance sought only with the variation thus set up

(b) A sues B to compel specific performance of a contract in writing to buy a dwelling house B proves that he assumed that the contract included an adjoining yard and the contract was so framed as to leave it doubtful whether the yard was so included or not The Court will refuse

to enforce the contract except with the variation set up by B

(c) A contracts in writing to let to B a wharf together with a strip of A s land delineated in a map Before signing the contract B proposed orally that he should be at I berty to sub stitute for the strip mentioned in the contract another strip of A s land of the same dimensions and to this A expressly assented B then signed the written contract A cannot obtain specific performance of the written contract except with the variation set up by B

Rehef against par ties and per sons claiming under them by a thre quent title

contract.

- (g) Against ul om Contracts may be specifically enforced
- 27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-
  - (a) either p rtv thereto.
  - (b) any other person claiming under him by a title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract,
  - (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant.
  - (d) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ,
  - (e) when the promoters of a public company have before its incorporation, entered into a contract, the company provided that the compart has ratified and adopted the contract and the contract is warranted by the terms of the incorporation

#### Illustrations...

### to clause (b)-

A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A s heir or other representative in in terest to perform the contract specifically

(Part II -Of Specific Relief Chapter II -Of the Specific Performance of Contracts \

A contracts to sell certain land to B for Rs 5 000 A afterwards conveys the land for Rs 6 000 to C, who has notice of the original contract B may enforce specific performance of the contract as against C

A contracts to sell land to B for Rs 5 000 B takes possession of the land Afterwards

may enforce specific performance of the contract against C A contracts to sell certain land to B Before the completion of the contract A becomes a lunatio and C is appointed his committee B may specifically enforce the contract against C

#### to clause (c)-

A, the tenant for life of an estate with remainder to B in due exercise of a power conferred by the settlement under which he is tenent for life contracts to sell the estate to C who has notice of the settlement Before the sale is completed A dies C may enforce specific per

> then in his to sell his

(h) Against whom Contracts cannot be specifically enforced

28. Specific performance of a contract cannot be enforced against a party what parties thereto in any of the following cases -

cannot be compelled

- (a) if the consideration to be received by him is so grossly inadequate to perform. with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circum. stances evidence of fraud or of undue advantage taken by the plaintiff.
- (b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled .
- (c) if his assent was given under the influence of mistake of fact, misapprehension or surprise Provided that, when the contract provides for compensation it, case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced

#### Illustrations-

to c ause (c)-

A, one of two executors, in the erroneous belief that he had the authority of his co-execu tor, enters into an agreement for the sale to B of his testator a property B cannot insist on the sale being completed

A directs an auction or to sell certain land. A afterwards revokes the auctioneer a authority as to 20 bighas of this land but the auctioneer madvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(Part II -0/ Specific Relief Chapter II -0/ the Specific Performance of Contracts Chapter III -Of the Rectification of Instruments)

(1) The effect of dismissing a Suit for Specific Performance

Bar of suit for breach after dis fareim

Application of preceding

sections to awards and

testamentary directions to execute settlements.

29. The dismissal of a suit for specific performance of a contract or part thereof shall but the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be

(1) Awards and Directions to execute Settlements

30. The provisions of this Chapter as to contracts shall, mutatis mutandis, apply to awards and to directions in a will or codicil to execute a particular settlement

# CHAPTER III.

## OF THE RECTIFICATION OF INSTRUMENTS

When instru-31. When, through fraud or a mutual mistake of the parties, a contract or ment may be other instrument in writing does not truly express their intention, either party. rectified. or his representative in interest, may institute a suit to have the instrument rectified, and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without preju-

dice to rights acquired by third persons in good faith and for value

Illustrations .... . 14 0 1. 1 Of to D ainst

so as to affect D s lease (b) By a marriage settlement, A, the father of B the intended wife, covenants with C, the

assignce has no right to any part of the annuity

32. For the purpose of rectifying a contract in writing, the Court must be as to intent of satisfied that all the parties thereto intended to make an equitable and con-

scientious agreement

33. In rectifying a written instrument, the Court may inquire what the Principles of instrument was interded to mean, and what were intended to be it legal consequences, and is not confined to the enquiry what the language of the instrument was intended to be

31. A centract in writing may be first rectified and then, if the plaintiff Specific entercement hes so prayed ir his plaint and the Court thinks fit, specifically enforced. al rectifical

COULTRCL.

Presumption

rectitiontion.

parties

(Part II .- Of Specific Relief Chapter IV -Of the Rescission of Contracts)

Illustration.

## CHAPTER IV

## OF THE RESCISSION OF CONTRACTS

- 35. Any person interested in a contract in writing! may sue to have it When rescinded, and such rescission may be adjudged by the Court in any of the rescission n av be following cases, namely -adjud\_ed.
  - (a) where the contract is voidable or terminable by the plaintiff,
  - 'b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff ,
  - (c) where a decree for specific perfermance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far aregards the party in default, or altogether, as the justice of the case may require.

#### Illustrations

#### to (1)-

A sells a field to B There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B B is entitled to have the contract rescinded.

#### to (b)-

A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B a creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescanded.

36. Rescussion of a contract in writing! cannot be adjudged for mere Presumon mistake, unless the party against whom it is adjudged can be restored to sub-

stantially the same position as if the contract had not been made

<sup>1</sup> The words ' in writing are repealed wherever the Transfer of Prop. 1ty Act, 1852 (IV of 1852), is in force see Act IV of 1852, ss. I and 2 General Acts, Vol. I.e.

Part II -Of Specific Relief Chapter IV -Of the Rescussion of Contracts.

Chapter V -Of the Cancellation of Instruments)

Alternative prayer for rescission in aust for specific per formance

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be resended and delivered up to be cancelled, and the Court, if it refuses to enforce the contract specifically, may direct it to be rescuided and delivered up accordingly

Court may require the rescission of a contract, the Court may require the revending to whom such relief is granted to make any compensation to the other do equity which justice may require

## CHAPTER V

## OF THE CANCELLATION OF INSTRUMENTS

If hen cancel lation may be ordered a

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious mjury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled

If the instrument has been registered under the Indian Registration Act, I the Court shall also send a copy of its degree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation

Mustrations

1 1 -41 -

underv (b) of the trust fo

(a) A the arrange of a gl = 1 - f

it to hi grants

may obtain the cancellation of this lease paid for by Bs acceptances of four bills drawn by A on B The bills are drawn to the agreement A sues B on one of

What metru ments may be partially cancelled 40. Where an instrument is evidence of different rights o. different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue

### Mustrati n

I draws a bill on B who endorses it to C, by whom it appears to be endorsed to D, who en doesne it to F C a endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects

Power to re quite party i e whom in atrument is cancelled to make our proastion 41. On adjudging the cancellation of an instrument, the Court may require the parts to whom such relief is granted to make any compensation to the other which justice may require

I ben tow the Indian Registration let 1908 (All of 1809), General lets, Ich. 11

(Part II -Of Specific Relief Chapter VI -Of Declaratory Decrees)

## CHAPTER VI 1

### OF DECLAPATORY DECREES

42. Any person entitled to any legal character, or to any right as to any Discretion property, may institute a suit against any person denying or interested to of Court as to deny, his title to such character or right and the Court may in its discretion of status or make therein a declaration that he is so entitled and the plaintiff need not in right such suit ask for any further relief

Provided that no Court shall make any such declaration where the plaintiff, Par to sich being able to seek further rehef than a mere declaration of title omits to do declaration

Explication—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence and for whom if in existence he would be a trustee.

### Illustrations

(e) A s larefully us possession of certain land. The inhibitants of a neighboring village-claim a right of way across the land. A may sue for a declaration that they are not entitle to the right so claimed.

- (d) A alienates to B property in which A has merely a life interest. The all enation is invalid as against C who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled
- (c) The valow of a sonless Handa al enates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may in a sust against the alienae, obtain a declaration that the alienation was made without legal necessity and was therefore you'd beyond the window a lifetime.
- (f) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may in a suit against the adopted son obtain a declaration that the adoption was invalid
  (f) A is in nossession of excit a proposer. R allow no that he about no property of the property of the

and children of B

43. A declaration made under this Chapter is binding only on the parties Effect of to the suit, persons claiming through them respectively, and where any of the declaration parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees

As to the Punjab see also the Punjab Land revenue Act 1897 (XVII of 1887) a 45, P and h W Code.

(Part II -Of Specific Relief Chapter VII -Of the Appointment of Receivers Chapter VIII -Of the Enforcement of Public Duties)

### Illustration

A a Hindu in a suit to which B, his alleged wife and her mother, are defendants seek, a declaration that his marriage was duly solemined and an order for the restation of his conjugil rights. The Court makes the declaration and order. C claiming that B is his wife, then uses A for the recovery of B. The declaration made in the former suit is not binding upon C

### CHAPTER VII

### OF THE APPOINTMENT OF RECEIVERS

Appointment
of receivers
discretionary
Peference to
Code of Civil
Procedure

44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court

The mode and effect of his appointment, and his rights, powers, duties and habilities are regulated by the Code of Civil Procedure 1

## CHAPTER VIII

### OF THE ENFORCEMENT OF PUBLIC DUTIES

Power to order public servants and others to do cert im speci Er sets. 45. Any of the High Courts of Judicature at Fort William, Madras and Bombay may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature

Provided .-

- (a) that an application for such order be made by some person whose property franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act,
- (b) that such doing or forbearing is, under any law for the time being in force, clerrly incumbent on such person or Court in his or its public character or on such corporation in its corporate character,
- (e) that in the opinion of the High Court such doing or forbearing is consonant to right and justice,
- (d) that the applicant has no other specific and adequate legal remedy;
- (e) that the remedy given by the order applied for will be complete

<sup>1</sup> See now the Code of Civil Procedure, 1909 (Act ) of 1909), General Acts, Vol. VI ]

Chapter VIII -Of the Enforcement of Public (Part II -Of Specific Relief Dutres 1

Nothing in this section shall be deemed to authorize any High Court-

Fxe ptons from such nower

- (f) to make any order binding on the Secretary of State for India in Cour cil on the Governor General in Council on the Governor of Malras in Council on the Governor of Romlay in Council or on the Lieu tenant Governor of Bengal
- (a) to male any order on any other servant of the Crown as such merely to enforce the satisfaction of a claim upon the Crown or
- (h) to make any order which is otherwise expressly excluded by any law for the time being in force
- 46 Every application under section 45 must be founded on an affiliant of App cation the person injured stating his right in the matter in question his demand of hove ad justice and the denial thereof and the High Court may in its discretion Procedure make the order applied for absolute in the first instance or refus it or giant a thereon rule to show cause why the order applied for should not be mule

If in the last case the person Court or corporation complained of shows Order in no sufficient cause the High Court may fit make an order in the alternative alter ative either to do or forbear the act mentioned in the order or to signify some reason to the contrary and make an answer thereto by such day as the High Court fixes in this behalf

- 47 If the person Court or corporation to whom or to which such order is Peremptory directed makes no ans ver or makes an insufficient or a false answer the High order Court may then issue a peremptory order to do or forbear the act abso lutely
- 48 Every order under this Chapter shall be executed and may be an Execution pealed from as if it were a decree made in the exercise of the ordinary original of and appeal civil jurisdiction of the High Court
- 49 The costs of all applications and orders under this Chapter shall be Costs. in the discretion of the High Court
- 50 Neither the High Court nor any Judge thereof shall hereafter 1884e Bar to have any writ of mandamus
- 51 Fach of the sail High Courts shall as soon as conveniently may be, Power to frame rules! to regulate the procedure under this Chapter and until such framerules. rules are framed the practice of such Court as to appli ations for and grants of writs of man lamus shall apply so far as may be practicable to applications and orders un ler this Chapter

1 For rules made by the High Court of Bombay at Bombay under this section, see Born R and O

(Part III -Of Preventure Retief Chapter IX -Of Injunctions generally Chapter X -Of Perpetual Injunctions)

## PART III

## OF PREVENTIVE RELIEF

### CHAPTER IX

## OF INJUNCTIONS GENERALLY

Preventive rel ef how granted Te nporary injurctions 52 Preventive rehef is granted at the discretion of the Court by in

junction temporary or perpetual
53 Temporary injunctions are such as are to continue until a specified
tune or until the further order of the Court They may be granted at any
period of a suit and are regulated by the Code of Civil Procedure 1

Perpetual injunct ons. I perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit the defendant is thereby perpetually enjoined from the assertion of a right or from the commission of an act which would be contrary to the rights of the plaintiff

### CHAPTER X

## OF PERFETUAL INSUNCTIONS

Perpetual injunctions when granted. 54 Subject to the other provisions contained in or referred to by this Chapter a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant whether expressly or by implication.

When such obligation arises from contract the Court shall be guided by the rules and provisions contained in Chapter II of this Act

When the defendant invides or threatens to invade the plaintiff's right to or enjoyment of property the Court\_may grant a perpetual injunction in the following cases (namely)—

- (a) where the defendant is trustee of the property for the plaintiff
- (b) where there exists no standard for ascertaining the actual damage caused or likely to be caused by the invasion,
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief
  - (d) where it is probable that pecuniary compensation cannot be got for the invasion
  - (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings

(Part III -Of Preventive Relief Chapter X -Of Perpetual Injunctions.)

EXPLANATION -For the purpose of this section a trademark is property.

#### Illustrations.

|                  |   |   |   |   |   |   |   |   | ,          |
|------------------|---|---|---|---|---|---|---|---|------------|
|                  |   |   |   |   |   |   |   |   |            |
| (c) T<br>rowed m | • | • | • | • | • | ٠ | ٠ | • | 11 or bor- |

(d) I marine in-

(c) A, an executor, through misconduct or involvency, is bringing the property of the deceased into danger The Court may grant an injunction to restrain him from getting in the assets

(f) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property B may see for an impunction to restrain the sale, even though compensation in money would have afforded lim adequate relief

(q) A makes a stiffement (not founded on marrage or other valuable consideration) of an estate on B and his children A then contracts to sell the estate to C. Bor any of his children

may sue for an injunction to restrain the sale

(h) In the course of A s employment as a valid, certain papers belonging to his client, B, come into his cases, A threatens to make these papers jubble, or to communicate their

come into his possession. A threatens to make these papers public, or to communicate their contex.

(1)

threat trary

(i) A, the owner of two adjoining houses, lets one to B and afterwards lets, the other to C A and C begin to make such afterations in the house let to C as will prevent the comfortable enjoyment of the hot selet to B. B may sue for an injunction to restrain them from so doing.

(a) A lets certam arable lands to B for purposes of husbandry, but without any express contract as to the mole of cultivation. Contrary to the mode of cultivation customary in the district, B threat in to row the lands with seed injurious thereto and requiring many years to eradicate. A may see tog an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandilke manner.

(t) A, B and C are partners, the partnership being determinable at will A threaten to do an act tending to the destruction of the partnership property B and C may, without seeking a dissolution of the partnership sue for an injunction to restrain A from doing the act

(m) A a Hindu widow in possession of her deceased husband s property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir expectant may sue for an injunction to restrain her

(n) A, B and C are members of an undivided Hindu family A cuts timber growing on the family property, and threatens to destroy part of the family house and to sell some of the family utenals. B and C may see for an injunction to restruct him.

(a) A the owner of certain houses in Calcutta, becomes insolvent. B buys them from the Official Assignmen and enters into possession. A presists in trepassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B mass use for an injunction to restrain further acts of trepass.

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A may

<sup>&</sup>lt;sup>1</sup> As to payment of interest out of capital by Railway Companies during construction, see the Indian Railway Companies Act, 1893 (X of 1835). General Acts, Vol. IV.

<sup>2</sup> But see a 3 of the Indian Railway Companies Act, 1895 (X of 1895), under which a Railway is permitted to pay interest on its paid up share capital out of capital upon certain conditions and restrictions.

(Part III — Of Preventine Retief Chapter IX — Of Injunctions generally.

Chapter X — Of Perpetual Injunctions)

## PART TIT.

## OF PREVENTIVE RELIEF.

## CHAPTER IX

## OF INJUNCTIONS GENERALLY

52 Preventive relief is granted at the discretion of the Court by in

junction temporary or perpetual

53 Temporary injunctions are such as are to continue until a specified
time or until the further order of the Court. They may be granted at any

Perpetual

Preventive

granted Temporary

period of a suit and are regulated by the Code of Civil Procedure <sup>1</sup>

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit the defendant is thereby perpetually enjoined from the assertion of a right or from the commission of an act which would be contrary to the rights of the plaintiff

## CHAPTER X

## OF PERPETUAL INTUNCTIONS

Perpetual injunctions when granted.

54 Subject to the other provisions contained in or referred to by, this Chapter a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely)—

- (a) where the defendant is trustee of the property for the plaintiff ,
- (b) where there exists no standard for ascertaining the actual damage caused or likely to be caused, by the invasion,
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief,
  - id) where it is probable that pecuniary compensation cannot be got for the invasion.
  - (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings

(Part III -Of Presentise Relief Chapter X -Of Perpetual Injunctions.)

EXPLANATION -For the purpose of this section a trademark is property

#### Illustrations

- (c) A, an executor, through misconduct or involvency, is bringing the property of the deceased into danger The Court may grant an injunction to restrain him from getting in the assets.
- (f) A, a trustee for B, is about to make an imprudent sale of a small part of the trust property B may sue for an injunction to restrain the sale, even though componention in money would have afforded him adequate relief
- (g) A makes as ttlement (not founded on marr age or other valuable consideration) of an estate on B and his children. A then contracts to rell the estate to C B or any of his children may sue for an injunction to restrain the sale
- (h) In the course of A's employment as a valid certain papers belonging to his client B, come into his possession. A threaters to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing
- (1) A is B s medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B s communications to him as a patient. This is contrary to As duty, and B may sue for an injunction to restrain him from so doing
- (f) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C A and C begin to make such afterations in the house let to C as will prevent the comfortable enjoyment of the house let to B B may sue for an injunction to restrain them from so doing.
  - (I) A lets certain arable lands to B for purposes of husbandry, but without any express
- (l) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership property. B and C may, without seeking a dissolution of the partnership sue for an injunction to restrain A from doing the act
- (m) A. a Hindu widow in possession of her deceased husband a property, commute destruction of the property without any cause sufficient to justify her in so doing. The heir expectant may sue for an injunction to restrain her.
- (n) A, B and C are members of an undivided Hindu family A cuts timber growing on the family property, and threatens to destroy part of the family house and to sell some of the family ubenvils. B and C may use for an ununction to restrain him
  - (c) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the Official Assignee and enters into possession. A persists in trespassing on and damaging the houses and B is thereby compelled, at considerable express, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

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As to payment of interest out of capital by Railway Companies during construction, see the Indian Railway Companies Act, 1895 (N of 1895) General Acts, Nol. IN

2 But see a 3 of the Indian Railway Companies Act 1893 (V of 1893), under which a Railway is permitted to pay interest on its paid up share capital out of capital upon certain conditions and restrictions.

(Part III -Of Preventive Relief Chapter X -Of Perpetual Injunctions.)

(q) A, in an administration suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets B proceeds against C's estate for his debt. A may sue for an injunction to restrain B

(r) A and B are in possession of contiguous lands and of the mines underneath them 1 A works his mine so as to extend under B s mine and threatens to remove certain pillars which

help to support B s mine B may sae for an injunction to restrain him from so doing (a) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B B may sue for an injunc-

tion restraining A from making the poise (f) A pollutes the air with smoke so as to interfere materially with the physical comfort of

B and C who carry on business in a neighbouring house B and C may sue for an injunction to restrain the pollution

(u) A infringes B s patent If the Court is satisfied that the patent is valid and has been

plained of and also to compel performance of the requisite acts

infringed B may obtain an in unction to restrain the infringement

(v) A pirates B s copyright B may obtain an injunction to restrain the piracy, unless the
work of which copyright is claimed as idelicate or obscere

(w) A improperly uses the trademark of B B may obtain an injunction to restrain the user, provided that B s use of the trademark is honest

(z) A, a tradesman holds out B as his partner against the wish and without the authority of B B may sue for an injunction to restrain A from so doing

(y) A, a very emment man, writes letters on family topics to B. After the death of A and B, C, who is B's residuary legates, proposes to make money by publishing A's letters D, who is A s executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them

(2) A carries on a manufactory and B is his assistant. In the course of his business. A im parts to B a storet process of value B afterwards demands money of A, threatening in case of refusal to disclose the process to C, a rival manufacturer A may sue for an injunction to restrain B from disclosing the process

55 When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach com-

### Illustrations

(a) A by new buildings obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act 2 Part IV B may obtain an injunction not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs Bs lights,

(b) A builds a house with caves projecting over B s land. B may sue for an injunction to

av also order all written destroyed.

also order A s letters to

be destroyed.

Mandatory

Injunctions.

(e) A threatens to publish statements concerning B which would be punishable under Chapter XXI of the Indian Penal Code 2 The Court may grant an injunction to restrain the pub lication, even though it may be shown not to be injurious to B s property

(f) A, being B a medical adviser, threatens to publish B s written communications with him showing that B has led an immoral life B may obtain an injunction to restrain the publication

(9) In the cases put as illustrations (1) and (w) to section 54 and in illustrations (e) and (1) to this section the Court may also order the comes produced by piracy, and the trade marks, statements and communications, therein respectively mentioned, to be given up or destroyed

<sup>1</sup> As to the working of mines under land the surface of which has been acquired by Government, see the Land Acquisition Mines Act, 1885 (XVIII of 1885), General Acts Vol III

<sup>2</sup> See now Act IX of 1909, General Acts Vol VI

<sup>3</sup> General Acts, Vol. I

(Part III -Of Pierentine Relief Chapter A -Of Perpetual Injunctions)

56 An injunction cannot be granted—

Injunction when.

(a) to stay a judicial proceeding pending at the institution of the suit in refused which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings,

(b) to stay proceedings in a Court not subordinate to that from which the injunction is sought .

(c) to restrain persons from applying to any legislative body,

(d) to interfere with the public duties of any department of the Govern ment of India or the Local Government, or with the sovereign acts of a Foreign Government.

(e) to stay proceedings in any criminal matter,

- (f) to prevent the breach of a contract the performance of which would not be specifically enforced .
- (a) to prevent, on the ground of nuisance, an act of which it is not reason. ably clear that it will be a nuisance .
- (h) to prevent a continuing breach in which the applicant has acquiesced;
- (i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust .
- (j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court .
- (A) where the applicant has no personal interest in the matter

#### Illu trat o is

(a) A seeks an injunction to restrain his partner, B from receiving the partnership-debts and effects. It appears that A had improperly powersed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(b) A manufactures and sells crucibles designating them as "patent plumbago-crucibles." though in fact they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy

not an honest one and he cannot obtain an injunction.

fal A salle an art ala a llad st lfar a m Ralm " gint on th a t

57 Notwithstanding section 56, clause (f), where a contract comprises Injunction an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the agreement Court is unable to compel specific performance of the affirmative agreement. shall not preclude it from granting an injunction to perform the negative agreement , provided that the applicant has not failed to perform the contract so far as it is binding on him

Specific Relief

Presidency Magistrates

[1877: Act I.

#### Illustrations

in Calcutta

(b) A contracts to sell to B the good will of a business A then sets up a similar business

a day fi tle mone distance nm by Bon B fails to pay the specified

## SCHEDULE

## [ENACTMENTS REPEALED ]

[Rep by the Repealing and Amending Act, 1891 (XII of 1891)]

## ACT No IV of 1877 1

[28th February 1877]

An Act to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency-towns.

Preamble

WHERLAS It is expedient to consolidate and amend the law regulating the procedure of the Courts of Magistrates in the Presidency-towns and to increase the unsadiction of such Courts. It is hereby enacted as follows '--

1 to 56 [Rep by the Code of Criminal Procedure, 1882 (Act X of 1882)]

Pees for summonses and Warrants 57. A fee of eight annas shall be paid for every summons or warrant issued by a Presidency Magistrate, except in the case of a summons to attend and give evidence or to produce documents, in which case there shall be paid a fee of four annas

37 , for the dis 1, 193 and 709 ,

<sup>1</sup> Short title, "The Presidency Magistrates (Court fees) Act, 1877" See the Indian Short Titles Act, 1897 (XIV of 1897)

"" p 83, for the 37, for the dis

Short title

for o of

ADDENDUM TO VOLUME I, GENERAL ACTS

Instrate may in any case remit any such fet, if he is power to tant is unable to pay the same, and shall remit it remit fees.

by a public servant in the execution of his duty

Code of Criminal Procedure 1882 (Act X of

ACT Yo X of 1877 [31st May 1877]
he admission of Military Lunatics into

to facilitate the admission of European military Preamble

l the Military Lunatics Act, 1877

f British India<sup>3</sup> and, so far as regards subjects of Local extent s of Native Princes and States in India in alliance

rce on the passing thereof
Commencement
1872 \quad Ren by the Rerealing and Amending Act.

ean officer, warrant officer, non commissioned Procedure in subject to the provisions of the <sup>6</sup>[Army Act] has respect to cordance with the provisions of the <sup>6</sup>[Miltary officer of time being]<sup>6</sup>, \* \* \* \* \* \* \* and it solds it delared lunant

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8 3 Bal Code
Upper Burn a generally (event the Shan States)—by the Burma Laws Act 1809 (Allf

of 1898) s 4 (1) and Sch. I

Acts vol. 11

6 The words and I as been ordered to be forwarded to any one of the Presidency towns
were repealed by the I epealing and Amending Act, 1903 (I of 1903) a. 4 and Sch. III. General Acts, vol. V. Procedure for descharge

of military

Payment of

expenses of

linatic

appears to 1 the Principal Medical Officer of Her Majesty's Ecree in India, the Surgeon General with the Government of India, the Surgeon General with the Government of India, the Surgeon General with the Government of Madras, the Surgeon General with the Government of Bombay, or the Principal Medical Officer of the Command to which the said lunation belongs], that it is inexpedient that he should be removed to England, or that he should be detained in military custody, until he can be conveniently sent to England, 2 flauch Principal Medical Officer or Surgeon General] may, if he think fit, make an orde, under his hand for the reception of the said lunation to the Lunatic Asylum at Bhowanipur, Madras or Bombay, or such other lunatic asylum as may be duly authorized for the purpose by the Governor General in Council,

and the officer in charge of such asylum shall receive the lunate in the asylum, and detun him therein until he is discharged therefrom, in accordance with the 4 military regulations] in force for the time being, or until of such Principal Medical Officer or Surgeon General] applies for his transfer to the military authorities in view to his removal to England

Sections 4, 5 and 6 Rep by Act I of 1901.

7. Wheneer it appears to the officer in charge of a lunatic asylum that the discharge of a military luratic, 6 \* \* \* \*, is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the dischirge should be made, the general officer commanding the\*? distinct or force, or other officer authorized to order the admission of military limatics into asylums, shall forthwith direct him to be discharged, and such discharge shall take place in accordance with the 4[military regulations] in force for the time being

8 The Paymaster of the military circle within which any such asylum is situate shall pay to the officer in charge of such asylum the expense of the ledging, maintenance, clothing and medicine of every linatic,6 \* \*

\* received and detained under this Act

9. [Legalization of past receptions in asylumit] Rep by the Repealing and Amendic q Act 1891 (XII of 1891)

No 608, Gaz

the Repealing and

I by Act I of

(XIII of 1894).

## THE OPIUM ACT, 1878

### CONTENTS.

### PREAMBLE

### SECTIONS.

1 Short title

Local extent Commencement

D C Damaslad 1

- 2 [Repealed]
- 3 Interpretation clause
- 4 Prohibition of poppy cultivation and possession, etc., of opium
- 5 Power to make rules to permit such matters
- 6 Duty on opium imported by land
- 7 Warehousing opium
- 8 Power to make rules relating to warehouses
- 9 Penalty for illegal cultivation of poppy, etc
- 10 Presumption in prosecutions under section 9
- 11 Confiscation of opium
- 12 Order of confiscation by whom to be made
- 13 Power to make rules regarding disposal of things confiscated, and rewards
- 14 Power to enter, arrest and seize, on information that opium is unlawfully lept in any enclo ed place
- 15 Power to seize opium in open places Power to detain, search and arrest
- 16 Searches how made
- 17 Officers to assist each other
- 18 Vexatious entries, searches seizures and arrests
- 19 Issue of warrants
- 20 Disposal of person arrested or thing seized
- 21 Report of arrests and seizures
- 22 Procedure in case of illegal poppy cultivation
- 23 Recovery of arrears of fees duties, etc
- 24 Farmer may apply to Collector or other officer to recover amount due to him by I censee
- 25 R∞overs of penalties due under bond

Schroule. [Repeated]

## ACT No. I of 1878 1

[9th January 1878.]

An Act to amend the law relating to Opium,

WHEREAS it is expedient to amend the law relating to opium; it is hereby enacted as follows.—

Short title Local extent

This Act may be called the Opium Act, 1878.

It shall extend to such local areas<sup>2</sup> as the Governor General in Council may, by notification in the Gazette of India, from time to time direct;

Commencement.

tion-clause

And it shall come into force in each of such areas on such day as the Governor General in Council in like manner directs in this behalf.

2. [Repeal and amendment of enactments] Rep by the Repealing and

Interpreta-

Amending Act, 1891 (XII of 1891), and the Repealing and Amending Act, 1894 (IV of 1894)
3. In this Act, unless there be something repugnant in the subject or con-

text,—
"opium" includes also poppy-heads, preparations or admixtures of opium,

and intoxicating drugs prepared from the poppy:
"Magistrate" means, in the Pievidency-towns, a Presidency Magistrate

and elsewhere, a Magistrate of the first class or (when specially empowered by

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Laws strict

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from the date openied aguest each

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1898),

the Local Government to try cases under this Act) at Magistrate of the second

import means to bring into the territories administered by any Local Government from sea or from foreign territory or from a territory admini tered by any other Lo al Government

export means to take out of the tetratories administered by any Local Government to sea or to any foreign territory or to any territory administered by another Local Government

' transport means to remove from one place to another within the terri tories administered by the same I ocal Government

4 Except as permitted by this Act or by any other enactment relating Prob bition to onium for the time bein, in force or by rules framed under this act or un lei cultivat on any such enactment no one shall--

and posses s on etc of optum

20

- (a) cultivate the poppy.
- (b) manufacture op um
- (c) possess onum
- (d) transport opium
- (e) import or export opium, or (f) sell onium
- 5 The Local Government with the previous sanction of the Governor to erto General in Council may from time to time by notification in the local Gazette nake rules to permit make rules' consistent with this act to permit absolutely or subject to the suci matters

1 For not ficat on empo ver ng Magistrates of the econd class to try cases under the Act ace

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1999 Pt II p 86
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(13) the M cl t ne ng n ton with sa. 3 10 13 and 14 see Burma Carette - 400 Pt I
(14) the c v l s vt o vof Ta newy and La vo n Upper Burma see Burma Car
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19 \* Pt. I pp. 4 hand +1 respect rely

VOL II

payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters —

- (a) the cultivation of the poppy,
- (b) the manufacture of opium,
- (c) the possession of opium,
- (d) the transport of opium,
- (e) the importation or exportation of opium and
- (f) the sale of opium and the farm of duties leviable on the sale of opium by retail

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea customs! for the time being in force or under section 6

Duty on opium im ported by land

6 The Governor General in Council may, from time to time, by notification in the Gazette of India, impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India or into any specified part thereof and may after or abolish any duty so imposed

Warehousing 7

- 7. The Governor General in Council may, by order notified in the Gazette of India,-
  - (a) authorize any Local Government to establish warehouses, for opium legally imported into, or intended to be exported from, the territories administered by such Local Government and
  - (b) cancel any such order

So long as such order remains in force the Local Government may, by notification published in the official Gazette,-

- (c) declare any place to be a warehouse for all or any opium legally im ported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, intended to be exported thence, and
- (d) cancel any such declaration

An order under clause (b) shall cancel all previous declarations under clause (c) of this section relating to places in the territories to which such order refers

Power to make riles relating to warehouses.

under

<sup>&</sup>lt;sup>1</sup> See the Nea Customs Act 1878 (VIII of 1878) (Chapter VIII) 14fm
<sup>2</sup> For notifications resuch under this section are Cazetto o Ind a 1804 Pt I, p 607, 16 d, 183 , p 834 164 1896, pp 146 and 670 and 1604 1890 p 464 (exempting poppy heads

imported into the Punjah)

As to driv on oppum imported in the Pinjah solist of notifiations on p 81 of the Punj P and O

As to rates at which of time shall be sold in the United Provinces at Government Treatures are North Western Provinces and Oudh Gazette 1803 Pt 1 p 405

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse

8. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, relating to make rules1 consistent with this Act to regulate the safe custody of onium warehoused under section 7, the levy of fees for such warehousing, the removal of such onium for sale or exportation and the manner in which it shall be dis posed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same

Power to make rules warehouses.

9 Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,-

Penalty for illegal cultivation of poppy, etc

- (a) cultivates the poppy, or
- (b) manufactures opium, or
  - (c) possesses opium, or
- (d) transportsoprum, or
- (e) imports or exports opium, or
- (f) sells opium, or
- (g) omits to warehouse opium, or removes or does any act in respect of warehoused onium.

and any person who otherwise contravenes any such rule.

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both ,

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced

10. In prosecutions under section 9, it shall be presumed, until the con- in prosecu trary is proved, that all opium for which the accused person is unable to account tion a under satisfactorily is opium in respect of which he has committed an offence under this Act

Presum; tion

- Confiscation 11. In any case in which an offence under section 9 has been committed,-
  - (a) the poppy so cultivated,
  - (b) the opium in respect of which any offence under the same section has been committed.
  - (c) where in the case of an offence under clause (d) or (e) of the same section, the offender is transporting, importing or exporting any

I For rules issued under this section, see Bombay Local Pules and Orders Ld. 1696, p. lvi. and Bombay Government Gazette, 190", Pt J. p. 811

opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,

(d) there, in the case of an offence under claute (f) of the same section, the offender has in his possession and opium other than the opium in respect of which the offence has been committed, the whole of such other opium.

shall be liable to confiscation

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if my) of the vessel or package in which such opium may be concealed and the animals and conveyances used in carrying it shill likewise be liable to confiscation

Order of confiscation by whem to be made

12. When the offender is convicted or when the person is charged with an offence in respect of any opium is acquitted but the Magistrate decides that the opium is liable to confiscation such confiscation may be ordered by the Magistrate

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation such fine as the officer thinks fit

When an offence against this Act has been committed, out the offender is not known or cannot be found or when opium not in the possession of any person cannot be satisfactorily accounted for the case shall be enquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation. Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) cluming any right thereto, and the exidence (if any) which they produce in support of their claims.

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- 13 The Local Government may, with the previous sarction of the Governor General in Council, from time to time, by notification in the local Gazette, make rules 1 consistent with this Act to regulate—
  - (a) the disposal of all things confiscated under this let, and
  - (b) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act
- 14 Any officer of any of the departments of Excise, Police, Customs, Salt, Opuum or Revenue superior in rank to a peon or constable, who may in right

I Seed strift described under a respect will have made all studently powers confired by the seed of

of his office be authorized by the "Local Government in this behalf, and who information has reason to believe, from personal knowledge or from information given by that opiur any person and taken down in writing, that opium hable to confiscation under kentingny this Act is manufactured, kept or concealed in any building, vessel or enclosed enclosed place, may, between sunrise and sunset,-

place

- (a) enter into any such building vessel or place
- (b) in case of resistance, breal open any door and remove any other ob stacle to such entry
- (c) seize such onum and all materials used in the manufacture, thereof and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to onium and
- (d) detun and search, and, if he thinl proper arrest any person whom he has reason to believe to be guilty of any offence relating to such onium under this or any other law for the time being in force
- 15 Any officer of any of the said departments may -

Power to

- (a) seize, in any open place or in transit, any opium or other thing which "circ opium he has reason to believe to be liable to confiscation under section places II or any other law for the time being in force relating to opium.
- (b) detain and search any person whom he has reason to beheve to be guilty of any offence against this or any other such law, and, if such detain person has opium in lus possession arrest him and any other per- search and sons in his company

16 All searches un der section 14 or section 15 chall be made in accordance Searches how with the provisions of the Code of Criminal Procedure 2

17 The officers of the several departments mentioned in section 14 shall, Officers to upon notice given or request made, be legally bound to assist each other assisteach in carrying out the provisions of this Act

18 Any officer of any of the said departments who, without reasonable verstions ground of suspicion enters or searches, or cause, to be entered or searched, entries, any building vessel or place.

ecarches ser res and arrests.

or vexatiously and unnecessarily seizes the property of any person on the

1 For notification confitting is were in off risk of the class referred to in-

(1) Am r Merwart er Vi P an 10 (2) As an er to an Manual of Local Rules and Orders to XXII .

(3) Bond in c. B in 1 and O and bombay Government Carette 18 8, Pr. I, p. 23 doi: 1 001 jg 974 and 24(0) abid, 1902 j. 15(1, abid, 1903), p. 1254 and 15bd, 1907, pr. 1 p. 1470.

(4) Burn a see Lurma Cazette 189 : 1t 1, 1 257 . (5) Mairas see Mil Is and Os,

(3) (~)

Pt. I, p. 145. intary Police a - Gazette of

# A crostleted often and Proced re, 18 to (1 of 1808) (eneral 1 to 101 )

opium exceeding the quantity (if any) which he is permitted to transport, import or export, is the case may be, the whole of the opium which he is transporting, importing or exporting

(d) there in the case of an offence under clause (f) of the same section, the offender has in his possession and opium other than the opium in respect of which the offence has been committed, the whole of such other opium

shall be hable to confiscation

The vessels pactages and coverings in which any opium liable to confiscation under this section is found and the other contents (if ny.) of the vessel or package in which such opium may be concealed and the animals and convey ances used in carrying it shall likewise be liable to confiscation

Order of confication by whom to be made 12 When the offender is convicted or when the person is charged with an offence in respect of any opium is acquitted but the Magistrate decides that the opium is hable to confiscation—such confiscation may be ordered by the Magistrate

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing higher to be confiscated an option to pay, in heu of confiscation such fine as the officer thinks fit

When an offence against this Act has been committed, out the offender is not known or cannot be found or when opium not in the possession of any person cannot be satisfactorily accounted for the case shall be enquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf either personally or in right of his office who may order such confiscation. Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the person (if any) cluming any right thereto and the evidence (if any) which they produce in support of their claims

Poser to maker 1 a regaring 1 sposal 1 things con to ated and renarls

- 13 The Local Government may, with the previous sarction of the Governor General in Council, from time to time by notification in the local Gazette make rules 1 consistent with this Act to regulate.—
  - (a) the disposal of all things confiscated under this let, and
  - (b) the rewards to be paid to officers and informers out of the proceeds of fines and confications under this Act

lo crioen ier arr si ar i serre on

14 Any officer of any of the departments of  $\Gamma$  voice, Police, Customs Salt, Opium or Revenue sujerior in rank to a peon or constable, who may in right

<sup>4</sup> Sel tefr (snot-lindre " a pri wi hieren i aloute ette powers conferred to the section

ır

of his office be authorized by the "I ocal Government in this behalf and who information has reason to believe from personal knowledge or from information given by that opium any person and taken down in writing that opium liable to confiscation under kept in any this Act is manufactured kept or concealed in any building vessel or enclosed enclosed place may between sunrise and sunset -

- (a) enter into any such building yessel or place
- (b) in case of resistance breal open any door and remove any other ob stacle to such entry
- (c) serze such or um and all materials used in the manufacture, thereof and any other thing which he has reason to believe to be hable to confiscation under section 11 or any other law for the time being in force relating to opium an l
- (d) detain and search and if he think proper arrest any person whom he has reason to believe to be puilty of any offence relating to such onium under this or any other law for the time being in force
- 15 Any officer of any of the said departments may—

(a) seize in any open thee or in transit any opium or other thing which seize opi m he has r ason to believe to be liable to confiscation under section places. II or any other law for the time being in force relating to onlym.

Po ver to ın onen

(b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law and if such detain person has opium in his possession arrest him and any otler per sons in his company

scarcl and arrest

16 All searches un der section 14 or section 1.3 shall be made in accordance Searches how with the provisions of the Code of Criminal Procedure 2

17 The officers of the several departments mertioned in section 14 shall. Officers to up on notice given or request made be legally bound to assist each other assiste ch in carrying out the provisions of this Act

18 Any officer of any of the said departments who without reasonable vexations

any building vessel or place or venationals and unnecessarily seizes the property of any person on the

ground of suspicion enters or searches or cause to be entered or searched catrisearches «ciz res and arrests.

(4) Brase Ir a Cazette IS& Pt Ip. 5"

() P nj l s I mjil (uzette Isst Pt I p. 45° (\*) I s ce (\rase\ W P a 10 db (uzette Is s Pt I p. 14s

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pretence of seizing or searching for any opium or other thing liable to confiscation under this Act, or vexatiously and unnecessarily detains, searches or arrests any person.

shall for every such offence, be pumshed with fine not exceeding five hun-

dred rupces

19 The Collector of the district, Deputy Commissioner or other officer authorized by the I ocal Government in this behalf, either personally or in right of his office, or a Magistrite, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium hable to confiscation to be lent or concealed

All warrants issued under this section shall be executed in accordance with

the provisions of the Code of Criminal Procedure 2

Disposal of person arrested or thing seized

20 Every person arrested, and thing seized, under sectior 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-station, and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued

Every office: to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be recessary for the disposal according to law of such person or thing

arrests and shall,

21 Whenever any officer makes any arrest or seizure under this Act, he shall, within forty eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior

22 In the case of alleged illegal cultivation of the poppy, the crop shall

Procedure in case of fliegal poppy cultivation

Report of

not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf, and such officer shall require the cultivator to give buil in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of and such cultivator shalf not be arrested unless within a reasonable time he fails to give such ball

Provided that, wherever Act No AIII of 1857 (An Act to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal) or any part thereof, is in force, nothing in this section shall apply to such cultivation

Recovery of arrears of fees duties, uto. 23 Any arrear of any fee or duty imposed under this Act or any rule made hereunder.

and any arrear due from any farmer of optum revenue,

<sup>1</sup> See foot note to s 14 supra

<sup>2</sup> See now the Code of Crit inal Procedure 1899 (1 of 1894) General Acts Vol 1 U P Code, C P Code and Ben Code

may be recovered from the person primarily hable to pay the same to the Government or from his surety (if any) as if it were an arrear of land revenue

24. When any amount is due to a farmer of opium-revenue from his Farmer may licensee in respect of a license such farmer may make an application to the apply to Collector or Collector of the di trict Deputy Commissioner or other officer authorized other officer by the Local Government in this behalf, praying such officer to recover amount due such amount on behalf of the applicant, and, on receiving such application, to him by such Collector. Deputy Commissioner or other officer may in his discretion license recover such amount as if it were an 2 arrear of land-revenue, and shall pay any amount so recovered to the applicant

Provided that the execution of any process issued by such Collector. 3[Deputy Commissioner] or other officer for the recovery of such amount shall be stayed if the hoensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee

25 When any person, in compliance with any rule made hereur der, gives Recovery of a bond for the performance of any duty or act, such duty or act shall be deem. pena tes due under bond. ed to be a public duty or an act in which the public are interested, as the case may be, within the meaning of the 4Indian Contract Act, 1872, section 74, and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue

### SCHEDDI E

[FNACTMENTS PFIEALFD]

Repealed by 4ct XII of 1891

<sup>1</sup> See foot note to a 14 supr ;

<sup>2</sup> See the Revenue Recovery Act, 1800 (I of 1800) General to a Vol IV
3 Deputy Commissioner was substituted for Deputy Collector by the Repealing and
Amending Act, 1801 (VII of 1891), Sch II, General sets Vol. IV 4 Supra

# (Prel minary Procedure on finding Treasure)

### ACT No. 3.1 or 1878 b

[13th February 1878]

An Act to amend the law relating to Treasure trove

if HEPPAS it is expedient to amend the law relating to treasure trove. It is hereby enacted as follows -

# Preliminary

Short title 1 This Act may be called the Indian Treasure trove Act, 1878 Extent It extends to the whole of British India Comp ence And it shall come into force at once ment

> 2 [Repeal of enactments] Rep by the Repealing and Amending Act 1891 (AJI of 1891)

3 In this Act-

treasure means anything of any value hidden in the soil or in anything affixed thereto

Collector ' means (1) any Revenue officer in independent charge of 2 district and (2) any officer appointed by the I ocal Government to perform the functions of a Collector under this Act 2

When any person is entitled under any reservation in an instrument of transfer of any land or thing affixed thereto to treasure in such land or thing he shall for the purposes of this Act be deemed to be the owner of such land or thing

# Procedure on finding Treasure

4 Whenever any treasure exceeding in amount or value ten rupces is found, the finder shall as soon as practicable give to the Collector notice in writing-

(a) of the nature and amount or approximate value of such treasure,

Notice by finder of tressure

Preamble

Interpreta

tion clause Treasure

Collector

Owner

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the Act . Bonn R at 10

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#### Treasure trove

### (Procedure on finding Treasure)

- (b) of the place in which it was found
- (c) of the date of the finding

and either deposit the treasure in the nearest Government treasury or give the Collector such security as the Collector thinks fit to produce the treasure at such time and place as he may from time to time require

5 On receiving a notice under section 4 the Collector shall after making Notincation such enquiry (if any) as he thinks fit take the following steps (namely) - requiring claimants to

- (a) he shall publish a notification in such manner as the I ocal Govern at rear ment from time to time prescribes in this behalf to the effect that on a certain date (mentioning it) certain treasure (mentioning its nature amount and approximate alie) was found in a certain place (mentioning it) and requiring all persons claiming the treasure, or any part thereof to appear personally or by agent before the Col lector on a day and at a place therein mentioned such day not be ing earlier than four months or later than six months after the date of the publication of such notification
- (b) when the place in which the treas ire appears to the Collector to have been found was at the date of the finding in the possession of some persor other than the finder the Collector shall also serve on such person a special notice in writing to the same effect
- 6 Any person having any right to such treasure or any part thereof, as Forfeiture of owner of the place in which it was found or otherwise and not appearing as required by the notification issued under a ction > shall forfeit such right 7 On the day notified under section 5 the Collector shall cause the trea

sure to be produced before him and shall enquire as to and determine-

(a) the person by whom the place in which and the circumstances under , ined by the which such treasure was found and

(b) as far as is possible the person by whom, and the circumstances under which such treasure was hidden

8 If, upon an engury made under section 7, the Collector secs reason to Ti e to be believe that the treasure was hidden within one hundred years before the date suit by of the finding by a person appearing as required by the said notification and person claim claiming such treasure or by some other person under whom such person treasure claims the Collector shall male an order adjourning the hearing of the case for such period as he deems sufficient to allow of a suit being instituted in the Civil Court by the claimant to establish his right

9 If upon such enquiry the Collector sees no reason to believe that the Wien treasure was so hidden or

if where a period is fixed and resection to no suit is in tituted as aforesa di correlecwithin such p riod to the knowledge of the Collector or

if such suit is instituted within such period and the plaintiff a claim is final ly rejected

ful re to at rear Matters to be enquire lu to

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Le derlared

(Preliminary Procedure on finding Treasure)

# ACT NO \$1 or 18781

[13th February 1878]

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# Preliminary

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And it shall come into force at once
2 [Repeal of enactments] Rep by the Repealing and Amending 1ct, 1891
(All of 1891)

Interpretation clause Treasure 3 In this Act-

3 In this Act-"treasure means anything of any value hidden in the soil or in anything

' Collector

affixed thereto
"Collector' means (1) any Revenue officer in independent charge of a

Owner

district and (2) any officer appointed by the I ocal Government to perform the functions of a Cellector under this Act <sup>2</sup>

When any person is entitled under any reservation in an instrument of transfer of any land or thing affixed thereto to treasure in such land or thing.

he shall, for the purposes of this Act, be deemed to be the owner of such land or thing

Procedure on finding Treasure

Notice by finder of treasure 4 Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall as soon as practicable give to the Collector notice in writing—

(a) of the nature and amount or approximate value of such treasure,

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was reported in 1894. Lol & rhem is now called the Banch. D. tr. t. et exactle 1899 11 1 p. 44. 2 In Lenday. Man hat have been appointed to perform the fain twist of fell choss in kr the between In R. and D.

### (Procedure on find a Treasure )

(b) of the place in which it was found

(c) of the date of the finding

and either deposit the treasure in the nearest Government treasury or give the Collector such security as the Collector thinks fit to produce the treasure at such time and place as he may from time to time require

5 On receiving a notice under section 4, the Collector shall, after making Notincation such enquiry (if any) as he thinks fit take the following steps (namely) requiring

- (a) he shall publish a notification in such manner as the Local Govern appear ment from time to time prescribes in this hebalf to the effect that on a certain date (mentioning it) certain treasure (mentioning its nature amount and approximate value) was found in a certain place (mentioning it) and requiring all persons claiming the treasure, or any part thereof to appear personally or by agent before the Col lector on a day and at a place therein mentioned such day not be ing earlier than four months or later than six months after the date of the publication of such notification .
- (b) when the place in which the treasure appears to the Collector to have been found was at the date of the finding in the possession of some person other than the finder the Collector shall also serve on such person a special notice in writing to the same effect
- 6 Any person having any right to such treasure or any part thereof as Forfeiture of owner of the place in which it was found or otherwise and not appearing as failure to required by the notification issued under section 5 shall forfeit such right

7 On the day notified under section 5 the Collector shall cause the trea sure to be produced before lum, and shall enquire as to and determine-

(a) the person by whom the place in which and the circumstances under a med by the which such treasure was found and

(b) as far as is possible the person by whom, and the circumstances under which such treasure was hidden

8 If upon an enqury made under section 7, the Collector sees reason to 71 et a believe that the treasure was hidden within one hundred years before the date , it by of the finding by a person appearing as required by the said notification and jet on the claiming such treasure or by some offer person under whom such person .. claims the Collecter shall mal e an order adjourning the hearing of the case for such period as he deems sufficient to allow of a suit being instituted in the Civil Court by the clumant to establish his right

9 If upon such enquiry the Collector sees no reason to believe that the Wi-n treasure was so ludden or

if where a period is fixed under section 8 no suit is instituted as aforesa d out of a within such p riod to the knowledge of the Collector or

if such sait is instituted within such period and the plaintiff s clair its final ly rejected

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Matters to be enquired is to

C llector

# (Procedure on finding Treasure)

Appeal against such declaration the Collector may declare the treasure to be ownerless

Any person aggreered by a declaration made under this section may appeal against the same within two months from the date thereof to the Chief Controlling Revenue authority

Subject to such appeal every such declaration shall be final and conclusive

Proceedings subsequent t declaration

10 When a declaration has been made in respect of any treasure under section 9 such treasure shall in accordance with the provisions hereinafter contained either be delivered to the finder thereof or be divided between him and the owner of the place in which it has been found in manner hereinafter provided

When no other person clar sas owner of pla e tra su e to be given to fnder

11 When a declaration has been made in respect of any treasure as afore said and no person other than the finder of such treasure has appeared as required by the notification published under section 5 and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof
12 When a declaration has been made as aforesaid in respect of any trea

When only one such per son lair s and his claim is not dis puted trea sure to be divided,

ed and claimed and the claim of such person is not disputed by the finder, the Collector shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely)—

If the finder and the person so claiming have not entered into any agree must then in force as to the disposal of the treasure, three fourths of the treasure shall be ellotted to such finder and the resulue to such person. If such

sure and only one person other than the finder of such treasure has so appear-

finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith Provided that the Collector may, in any case, if he thinks fit, instead of

Provided that the Collector may, in any case, if he thinks fit, insteadividing any treasure as directed by this section —

(a) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be,

(b) sell such treasure or any portion thereof by public auction and divide the sale proceeds between the parties according to the rule hereinbefore prescribed

Provided also that, when the Collector has by his declaration under section 9 rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose

### (Procedure on finding Treasure)

claim has been so rejected or when an appeal has been so presented, after such appeal has been dismissed

When the Collector has made a division under this section he shall deliver and shares to the parties the portions of such treasure or the money in lieu thereof to ed to parties which they are respectively entitled under such division

13 When a declaration has been made as aforesaid in respect of any trea. In case of sure, and two or more persons have appeared as aforesaid and each of them owners! ip of claimed as owner of the place where such treasure was found, or the right of place pro any person who has so appeared and claimed is disputed by the finder of such be stayed treasure the Collector shall retain such treasure and shall make an order stay ing his proceedings with a view to the matter being enquired into and deter mined by a Civil Court

14 Any person who has so appeared and claimed may, within one month Settlement of from the date of such order, institute a suit in the Civil Court to obtain a de cree declaring his right and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants

such dispute

15 If any such suit is instituted and the plaintiff's claim is finally estab lished therein the Collector shall subject to the provisions of section 12 divide the treasure between him and the finder

and division thereupon

If no such suit is instituted as aforesaid or if the claims of the plaintiffs in all such suits are finally rejected the Collector shall deliver the treasure to the finder

> quire the treasure on Government

16 The Collector may at any time after making a declaration under sec Power to se tion 9 and before delivering or dividing the treasure as hereinbefore provided declare by writing under his hand his intention to acquire on behalf of the behalf of Government the treasure, or any specified portion thereof, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion together with one fifth of such value and may place such sum in deposit in his treasury to the credit of such persons, and thereupon such treasure or portion shall be deemed to be the property of Government and the money so deposited shall be dealt with as far as may be, as if it, were such treasure or portion

17 No decision passed or act done by the Collector under this Act shall be Decision of called in question by any Civil Court, and no suit or other proceeding shall lie and and no Collector fiagainst him for anything done in good faith in exercise of the powers hereby suit to lie against him

conferred 18 A Collector making any enquiry under this Act may exercise any power Collector to conferred by the Code of Civil Procedure! on a Civil Court for the trial of suits exercise

for acts done powers of Civil Court

# (Procedure on finding Treasure Penalties)

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Penalty on

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owner abet

ting offence

inder failing

19. The Local Government may, from time to time, make rules! consistent with this Act to regulate proceedings hereunder

Such rules shall, on being published in the local Gazette, have the force of law

### Penaltres

20 If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security, required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure or the money in heu thereof to which he would otherwise be cutifled, shall vest in Her Maiesty.

and he shall on conviction before a Magistrate be punished with imprisonment for a term which may extend to one year, or with fine, or with both

21. If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code,2 any offence under section 20, the share LLV of under section of such treasure, or the money in heu thereof to which he would otherwise be entitled shall vest in Her Majesty,

> and he shall, on conviction before a Magistrate, be punished with imprisomment which may extend to six months or with fine, or with both

#### SCHEDULE

[Rep by the Repealing and Amending Act, 1891 (XII of 1891)]

2 ( eneral lets, lol I

<sup>1</sup> For rules made under the powers conferred by this section in-Bombay - see Bom R and O Burma - see Bur R M Madras we Mad R and O Bengo Lakutta (azette 1908 Pt I p 637 Punjab s Panjab Gost Gazette 1908 Pt I , p 3.6 United Provin is see North Western Provinces and Oudh Last of Local Pules and Orders Id 1894 p 55 Central Provinces—s c C P P and O Assum -see Assum List of Local Pul a and Orders Id 1893 p 107. timer Merwara - Gazette of India, 1997, It II, p. 1743

### THE INDIAN FOREST ACT, 1878

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  - 61 Power to prevent commission of offence
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### SCHEDULE - EVACTMENTS REPFALED.

# ACT No. VII of 1878.1

[8th March 1878]

An Act to amend the law relating to forests, the transit of forestproduce and the duty leviable on timber.

Whereas it is expedient to amend the law relating to forests, the tran- Preamble sit of forest-produce and the duty leviable on timber; It is hereby enacted as follows .-

### CHAPTER I.

#### PRELIMINARY.

1. This Act may be called the Indian Forest Act, 1878.

Short title

It shall come into force at once in the territories respectively administered Commence by the Governor of Bombay in Council, the Lieutenant-Governors of the ment, Lower Provinces, the North-Western Provinces, and the Punjab (except the district of Hazara),2 and the Chief Commissioners of Oudh, the Central Provinces and Assam 3

1 For Statement of Objects and Reasons, see Cazette of India, 1877, Pt. V, p. 11; for the first Report of the Salect Computtee, ore shad, Pt. V, p. 400; for Proceedings in Council, see shall.

# (Chapter I -Preliminary)

Pstension

And any other Local Government man, from time to time, with the previous sanction of the Governor General in Council, extend, I by notification in the local official Gazette, this Act to all or any of the territories for the time being under its administration

Repeal of

On and from the date on which this Act comes into force in any of the said territories, the enactments mentioned in the schedule hereto unnexed shall be repealed in such territories. But all rules made under or validated by any of the said enactments and in force at the date of such repeal shall, so far as they are consistent with this Act, be deemed to have been made, and published hereunder.

Interpreta tion clause.

- 2 In this Act, unless there be something repugnant in the subject or context,—
- ' Forest officer' means any person whom the Governor General in Council, or the Local Government or any officer empowered by the Governor General in Council or the Local Government in this 2-brahif, may from time to time appoint by name, or as holding an office, to carry out all or any of the purposes of this Act, or to de anything required by this Act or any rule made under this Act to be done by a Forest-officer
  - 3 'tree' includes palms, bamboos, stumps, brushwood and canes
  - 4 "tunber" includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any nutpose or not
    - 4 " forest-produce " includes-
    - (a) the following, whether found in, or brought from, a forest or not, that is to say —timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers and myrabolams, and

4 Time definitions of 'timber" and "forest produce" were substituted for the original d finitions by the Forest Act, 1890 (V of 1890), K 2 (2) and (3) respectively, that

The original clause only referred to bamboos, stumps

<sup>1</sup> Act VII of 1978 has been extended under this power to the Province of Coorg—see Coorg

1878 Act VII]

(Chapter I - Preliminary Chapter II -Of Reserved Forests )

- (b) the following when fourd in or brought from a forest that is to say --
  - (1) trees and leaves flowers and fruits and all other parts or produce not herembefore mentioned of trees
  - (11) plants not being trees (including grass creepers reeds and moss) and all parts or produce of such plants
  - (111) wild animals and skins tuels horns bones silk coroons hones and way and all other parts or produce of animals and
  - (19) peat surface soil rock and munerals (including limestone laterite mineral oils and all products of mines or quarries)

forest offence means an offence punishable under this 1ct or under any rule made under this Act

includes elephants camels buffilees horses mares geldings cattle ponies colts fillies mules asses pgs rans ewes sheep lambs gorts and Lids

river ' includes streams canals creeks and other channels natural or artificial

### CHAPTER II

### OF RESERVED FORESTS 2

3 The Local Government may from time to time constitute any forest land or waste land which is the property of Government, or over which the reserve Government has proprietary rights or to the whole or any part of the forestproduce of which the Government is entitled a reserved forest in the manner heremafter provided

4 Whenever it is proposed to constitute any land a reserved forest the Noti cath Local Government may publish a notification in the local official Gazette-

by Local

- (a) declaring that it is proposed to constitute such hand a reserved forest
  - 3 (b) specifying as nearly as possible the situation and Limits of such land and
  - (c) appointing an officer (hereinafter called the Forest se tlement officer') to maure into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or

This clause was substituted for the cit, nal cl. ( ) by the Ferest Act 16 0 (1 of 1 a) : Ceneral Acts, Vol. IV The original clause ran as f flows - "(!) specifying the limit of

# (Chapter II -Of Reserved Fore ts)

over any land comprised within such limits or in or over any forest produce, and to deal with the same as provided in this Chapter

Explanation —For the purpose of clause (b) of this section, it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well known or readily intelligible boundaries

The officer appointed under clause (c) of this section shall ordinarily be a person not holding any forest office except that of Forest-settlement-officer

Nothing in this section shall prevent the Local Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid to perform the duties of a Forest-settlement-officer under this Act

Par of ac crual of forest rights.

5 During the interval between the publication of such notification and the date fixed by the notification under section 19, no right shall be acquired in or over the land comprised in such notification except by succession or under a grant or contract in writing made or entered into by or on behalf of Government or some person in whom such right was vested when the former notification was issued, and no fresh clearings for cultivation or for any other purpose shall be made in such land <sup>1</sup>[except in accordance with rules prescribed by the Local Government]

Proclamation by Forest settlement officer

- 6 When a notification has been issued under section 4, the Forest-settlement-officer shall publish in the language of the country, in every town and village in the neighbourhood of the land comprised therein, a proclamation—
  - 2 (a) specifying, as nearly as possible, the situation and limits of the proposed forest,

(b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest, and

(c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or 5 either to present to such officer within such period a written notice specifying, or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof

In juity 1 y Forest set tlement ofh er 7. The Forest-settlement officer shall take down in writing all statements made under section 6, and shall, at some convenient place, inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or 5 and not claimed under section 6 so far as the same may be ascertunable from the records of Government and the exidence of any persons likely to be acquainted with the same.

<sup>1</sup> The words were added by the Forent bett 1850 (North 1850), a. 1 General Acts bold by 2 Dieselaus, was substituted for the cramming of the bold of 18 0 of 5. The clours can be precised for the limits of the prepared for the

### (Claster II -Of Reserved Forest, )

8 For the purpose of such inquiry the Forest settlement officer may Powers of exercise the following powers that is to say -

Forest-rettlement

- (a) power to enter by him elf or any officer authorized by him for the officer purpose upon any land and to survey demarcate and male a map of the same and
- (t) the powers of a Civil Court in the trial of suits

9 Rights in respect of which no claim has been preferred under section Extinction of 6 and of the existence of which ro knowledge has been acquired by inquiry under section " shall be extinguished unless before the notification under ec tion 19 is published the person claiming them satisfies the Forest settlement officer that he had sufficient cause for not preferring such claim within the period fixed under section 6

19A (1) In the case of a claim relating to the practice of shifting cultiva. Treatment of tion the Forest settlement officer shall record a statement setting forth the claim srelation and the forest settlement officer shall record a statement setting forth the purticulars of the claim and of any local rule or order under which the tice of slift practice is allowed or regulated and submit the statement to the local tion Government together with his opinion as to whether the practice should be permitted or prohibited wholly or in part

- (2) On receipt of the statement and opinion the Local Government may mal e an order permitting or prohibiting the practice wholly or in part
- (3) If such practice is permitted wholly or in part, the Forest settlement officer may arrange for its exercise-
  - (a) by altering the limits of the land under settlement so as to exclude land of sufficient extent of a suitable kind and in a locality ra sonably convenient for the purposes of the claimants or
  - (b) by causing certain portions of the land under settlement to be sep arately demarcated and giving remission to the claimants to practise shifting cultivation therein under such conditions as he may prescribe

All arrangements made under this sub-section shall be subject to the previous sanction of the Local Government

(4) The practice of shifting cultivation shall in all cases be deemed a pri vilege subject to control restriction and abolition by the I ocal Government

10 In the case of a claim to a right in or over any land other than a right Power to of way or pasture or to forest produce or a water course the Forest settle ment officer shall pass an order admitting or rejecting the same in whole or in in this part

acquire land

If such claim is admitted in whole or in part, the Forest settlement offi cer shall either (1) exclude such land from the limits of the proposed forest. or (2) come to an agreement with the owner thereof for the surrender of his

# (Chapter II -Of Reserved Porests)

Pleaders

18 The Local Government or any person who has made a claim under this Act may appoint any person to appear plead and act, on its or his behalf before the Forest settlement officer or the appellate officer or Court, in the course of an inquiry or appeal under this Act

Notification ded ring forest reserve l

- 19 When the following events have occurred (namely) -
  - (a) the period fixed under section 6 for preferring clums has elapsed, and all claims (if any) made within such period have been disposed of by the lorest settlement officer and
  - (b) if such claims have been made and the period limited by section 16 for appealing from the orders passed on such claims has clapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court, and
  - (c) all lands (if any) to be included in the proposed forest which the Forest settlement officer has under section 10 elected to acquire under the I and Acquisition Act 1870 have become vested in the Government under section 16 of that Act

the Levil Government may publish a netification in the local official Greater specifying definitely, according to boundary-marks erected or other wise the limits of the forest which it is intended to reserve and declaring the ame to be reserved from a date fixed by such notification

I'rom the date so fixed such forest shall be deemed to be a reserved forest

20 The Forest-officer shall, before the date fixed by such notification cause a translation thereof into the language of the country to be published

in every town and village in the neighbourhood of the forest

notif ention in neigh bour boost of forest Power to tevise. arrange nent made un ler section 11 or

I ul lication

of a ch

of tras slation

21 The Local Government may within five years from the publication of any notification under section 19, revis any arrangement made under section It or 17 and may, for this purpose researd or modify any order made under e ection 11 or 17 and direct that any one of the preceedings specified in section It be taken in her of any other of such proceedings or that the rights ad nutted under section 11 be commut d under section 15

**\o tight** acquired over reserved f rest except as here provided. Hights not to be alrenated

with sut

sancti n

22 No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writin, made by or en behalf of the Government or of some person in whom such right was visted when the notification under section 19 was resuch

23 Notwithstanding anything contained in section 22 no right continued under section 11 clause (c) shall be abenated be was of grant sile leasmortgage it otherwise without the sanction of the lawal Concernment

Provided that when any such right is appendant to any lind or house it may be sold or otherwise alienated with such lind or house

### (Chapter II -Of Reserved Forests)

No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 13

24 The Forest-officer may from time to time, with the previous sanction power to stop of the Local Government or of any officer duly authorized in that behalf, stop ways and any public or private way or water course in a reserved forest

Provided that a substitute for the way or water-course so stopped, which forests the I ocal Government deems to be reasonably convenient, already exists, or has been provided or constructed by the Foiest officer in lieu thereof

25 Any person who-

(a) makes any fresh clearing prohibited by section 5, or

probabated in such forests

1 (t) sets fire to a reserved forest, or, in contravention of any rules 2 made by the Local Government, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest .1

or who, in a reserved forest,-

- (c) kindles, keeps or carries any fire except at such seasons as the Forestofficer may from time to time notify in this behalf,
  - (d) trespasses or pastures cattle, or permits cattle to trespass;
  - (e) causes any damage by negligence in felling any tree or cutting or dragging any timber .
  - (f) fells, girdles, lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages, the same,
  - (q) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce.
  - (h) clears or breaks up any land for cultivation or any other purpose,
  - 3(1) in contravention of any rules which the Local Government may from time to time prescribe, 4 [kills or catches elephants, | hunts, shocts, fishes, poisons water or sets traps or snares,

shall be punished with imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both, in (Chapter II -Of Reserve) Forests Clapter III -Of Village forests )

addition to such compensation for damage done to the forest as the convicting Court may direct to be paid

Nothing in this section shall be deemed to prohibit (a) any act done by per miss on in writing of the Forest officer or under any rule made by the Local Government or (b) the exercise of any right continued under section 11 clause (c) or created by grant or contract in vriting made by or on behalf of Govern ment under section 23

Whenever fire is caused wilfully or by gross negligence in a r served forest the Local Government may (notwithstanding that any penalty has been in flicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest produce shall be suspended for such period as it thinks fit

Power to declare forest no longer reserved

26 The Local Government may with the previous sanction of the Gover nor General in Council by notification in the local official Gazette direct that from a date fixed by such notification! any forest or any portion thereof reserved under this Act shall cease to be a reserved forest

From the date so fixed such forest or portion shall cease to be reserved but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation

### CHAPTER III

#### Or VILLAGE FORESTS

Formation. of village forests

27 The Local Government may from time to time assign to any village community the rights of Government to or over any land which has been constituted a reserved forest and may cancel such assignment. All forests so assigned chall be called village forests

The Local Government may from time to time make rules for regulating the management of village forests prescribing the conditions under which the community to which any such assignment is made may be provided with tumber or other forest produce or pasture and their duties for the pro tection and improvement of such forest

All provisions of this Act relating to reserved forests shall (so far as they are consi tent with the rules so made) apply to village forests

<sup>1</sup> For notifications under this section see Punjab Cazette 1907 Pt I pp 3 and 8 to 15

(Chapter IV -Of Protected Forests )

#### CHAPTER IX

#### OF PROTECTED COPPERS !

28 The Local Government may from time to time, by notification in the "Protects" local official Gazette declare the provisions of this Charter applicable to any ferest land or waste land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary nobts, or to the whole or any part of the forest-produce of which the Government is entitled

587

The forest land and waste lands comprised in any such notification shall be called a "protected forest"

No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest land or waste land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the Local Government thinks suffi

Every such record shall be presumed to be correct until the contrary is proved

Provided that, if in the case of any forest land or waste-land, the Local Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as that the rights of Government will in the meantime be endangered, the Local Government may (pending such inquiry and record) declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities

29 The Local Government may from time to time, by notification in the Power to local official Gazette.-

Seation-

- (a) declare any class of trees in a protected forest, or any trees in any such forest, to be reserved from a date fixed by such notification ,
- (b) 2 declare that a portion of such forest be closed for such term, not closing exceeding twenty years, as the Local Government thinks fit, and that the rights of private persons (if any) over such portion shall be suspended during such term . Provided that the remainder of such forest-be sufficient, and in a locality reasonably convenient for the due exercise of the rights suspended in the portion so closed .

(c) prohibit, from a date fixed as aforegaid, the quarrying of stone, or the robbiting burning of lime or charcoal, or the collection or subjection to any forest promanufacturing process, or removal, of any forest produce, in any dice, etc., and breaking such forest, and the breaking up or clearing for cultivation, for up or clear-

Publication

of translation

of such noti-

neighbour

Power to make rules

for protected forests

hood

in the

# (Chapter IV -Of Protected Forests)

building, for herding cattle or for any other purpose, any land in any such forest, and

(d) alter or cancel such declaration or prohibition

30. The Collector or Deputy Commissioner of the district shall cause a translation into the language of the district, of every notification issued under section 29, to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification

131. The Local Government may from time to time make rules to regulate the following matters —

- (a) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest produce, from protected forests,
- (b) the granting of licenses to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for their own use, and the production and return of such licenses by such persons,
- (c) the granting of licenses to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licenses by such persons,
- (d) the payments (if any) to be made by the persons mentioned in clauses (b) and (c) of this section, for permission to cut such trees, or to collect and remove such timber or other forest produce,
- (e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made, -
- (f) the examination of forest produce passing out of such forests ,
- (g) the clearing and breaking up of land for cultivation or other purposes in such forests,
- (h) the protection from fire of timber lying in such forests and of trees reserved under section 29;
- (i) the cutting of grass and pasturing of cattle in such forests,

(4)

<sup>1</sup> For rules under this section for—

<sup>(1)</sup> Bombry, see Bom R and O , (2)

<sup>(</sup>d) for the Pt. I.

### (Chapter IV -Of Protected Forests)

- (a) 1 killing or catching elephants | hunting shooting fishing poisoning water and setting traps or snares in such forests
- (A) the protection and management of any portion of a forest closed under section 29
- (1) the exercise of rights referred to in section 28
- 32 Any person who commits any of the following offences -(a) fells girdles lops taps or burns any tree reserved under section 29,

Penalties for travention of

- or strips off the barl or leaves from or otherwise damages any under section such tree (b) contrary to any prohibition under section 29 quarries any stone or burns any lime or charcoal or collects subjects to any manu
- acturing process or removes any forest produce (c) contrary to any prohibition under section 29 breaks up or clears for
- cultivation or any other purpose any land in any protected forest (d) sets fire to such forest or kindles a fire without taking all reasonable precautions to prevent its spreading to any trees reserved under section 29 whether standing fallen or felled or to any closed por
- tion of such forest (c) leaves burning any fire kindled by I im in the vicinity of any such trees or closed portion
- (f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid
- (a) 1 ermits cattle to damage any such tree
- (h) infringes any rule made under section 31

shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both

2 [Whenever fire is caused wilfully or by gross negligence in a protected forest the Local Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of any right of pasture or to forest produce shall be supended for such period as it thinks fit 1

33 Nothing in this Chapter shall be deemed to prohibit any act done with Nothing in the permission in writing of the Forest officer or in accordance with rules made this Chapte under section 31 or (except as regards any portion of a forest closed under sec actide ex tion 29) 3for any rights the exercise of which has been suspended under section 32] in the exercise of any right recorded under section 28

I These words are repealed in the L 1 of Provinces the Centr I Pro inc a and Coorg and VI of 15 J

<sup>1</sup> t. 1991

<sup>3</sup> Tiese only were inserted by a 3 of Act 1 of 1 40! 7 #

(Chapter V - Forests under Conservancy administration when this Act comes into force Chapter VI -Of the Control over Forests and I ands not being the Property of Government \

### CHAPTER V

Forests under Conservancy administration when this Act comes into FORCE

34 Within twelve months from the date on which this Act comes into force under conser in the territories administered by any Local Government such Government vancy ad ministration shall, after consideration of the rights of the Government and private persons in all forest lands or waste lands then under its executive control for purposes of forest-conservancy determine which of such lands (if any) can according to justice equity and good conscience, be classed as reserved forests or protected forests under this Act, and declare by notification in the local official Gazette, any lands so classed to be reserved or protected forests, as the case may be

Provided that such declaration shall not affect any rights of the Govern ment or private persons to or over any land or forest-produce in any such forest which have previous to the date of such declaration, been inquired into, set tled and recorded in a manner which the I ocal Government thinks sufficient

Provided also that if any such rights have not on such date been so inquired into settled and recorded, the Local Government shall direct that the same shall be inquired into settled and recorded in the manner provided by this Act for reserved or protected forests as the case may be, and, until such inquiry, settlement and record have been completed no such declaration shall abridge or affect such rights

### CHAPTER VI

OR THE CONTROL OVER FORESTS AND LANDS NOT DEING THE PROPERTY OF GOVERNMENT

Protection of forests for special pur กิดจะส

Forests

then th

Act comes

into force

- 35 The Local Government may from time to time, by notification in the local official Gazette, regulate or prohibit in any forest or waste lan I-
  - (a) the breaking up or clearing of land for cultivation.
  - (b) the pasturing of cattle,
  - (c) the firing or clearing of the vegetation,

when such regulation or prohibition appears necessary for any of the following purposes -

first, for protection against stoims, winds, rolling stones, floods and avalanches.

(Charter VI -Of the Control over Forests and Lands not being the property of Government \

second, for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts the prevention of landships and of the for mation of ravines and torrents, and the protection of land against erosion or the deposit thereon of sand stones or gravel.

third for the maintenance of a water supply in springs, rivers and tanks. tourth for the protection of roads bridges railways and other lines of communication.

fifth for the preservation of the public health . and may alter or cancel such notification

The Local Government may, for any such purpose, construct at its own expense in or upon any forest or waste land such work as it thinks fit

Provided that no such notification shall be made or work begun until after the issue of a notice to the owner of such forest or land calling on him to show cause within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, and until his objections (if any) and any evidence he may produce in support of the same have been heard by an officer duly appointed in that behalf and have been considered by the Local Government

36 In case of neglect of or wilful disobedience to, any regulation or pro Power to as hibition under section 35 or if the purposes of any work to be constructed agement of under that section so require the Local Government may, after notice in write freets ing to the owner of such forest or land and after considering his objections (if any) place the same under the control of a Forest officer, and may declarthat all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land

The net profits (if any) arising from the management of such forest or land shall be paid to the said proprietor

37 In any case under this Chapter in which the Local Government con siders that in heu of placing the forest or land under the control of a Forest officer, the same should be acquired for public purposes the Local Government writing -may proceed to acquire it in the manner prescribed by the Land Acquisition \ct 18701

The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public pur poses and the I ocal Government shall acquire such forest or land accord ingly

38 The owner of any land or, if there be more than one owner thereof, Promise of the owners of shares therein amounting in the aggregate to at least two thirds from the

Government Chapter VII.-Of the Duty on Timber and other Forest produce)

thereof may with a view to the formation or conservation of forests thereon represent in writing to the Collector or Deputy Commissioner their desire-

- (a) that such land be managed on their behalf by the Torest officer as a reserved or a protected forest on such terms as may be mutually agreed upon or
- (b) that all or any of the provisions of this Act be applied to such land

In either case the Local Government may, by notification in the local official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants

Any such notification may be altered or cancelled by a like notification

# CHAPTER VII

OF THE DUTY ON TIMBER AND OTHER FOREST PRODUCE 1

39 The Local Government, with the previous sanction of the Governor Power to mnose duty General in Council may levy a duty in such manner, at such places and at on timber such rates as it may from time to time prescribe by notification in the local and other forest pro official Gazette on all timber 2 for other forest produce]duce (a) which is produced in British India and in respect of which the Gov-

- ernment has any right .
- (b) which is brought from any place beyond the frontier of British India

In every case in which such duty is directed to be levied ad valorem the Local Government may, with the like sanction from time to time fix by like notification the value on which such duty shall be asse sed

All duties on timber " [or other forest produce] which at the time when this Act comes into force in any territory, are levied therein under the au thorsty of the Local Government shall be deemed to be and to have been duly

levied under the provisions of this Act 40 Nothing in this Chapter shall be deemed to limit the amount (if any) Limit not to chargeable as purchase money or royalty on any timber or other forest produce, although the same is levied on such timber or produce while in transit, in the money or same manner as duty is levied

1 This heading was substituted for the original heading by the Porest Act 1890 (V of 1890)

Po ver to fix value for

duty

ad valorem

apply to

Purchase

royalty

s S (1) General Acts Vol IV These words were inserted by Ac 1 of 1890 & 8 (°) if d

(Chapter VIII -Of the Control of Timber and other Forest-produce in Transit)

#### CHAPTER VIII

OF THE CONTROL OF TIMBER AND OTHER FOREST PRODUCE IN TRANSIT

41 The control of all rivers and their banks as regards the floating of tim. Power to ber, as well as the control of all timber and other forest-produce in transit by make rules to regulate land or water, is vested in the Local Government, and it may from time to transit of time make rules to regulate the transit of all timber and other forest produce. forest-produce

- 1 Such rules may (among other matters)-
- (a) prescribe the routes by which alone timber 2 [or other] forest-produce may be imported, exported or moved, into, from or within, British India.
- (b) prohibit the import and export or moving of such timber or other produce without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass.
- (c) provide for the issue, production and return of such passes and for the payment of fees therefor .
- (d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or to which it is desirable for the purposes of this Act to affix a mark,
- (e) provide for the establishment and regulation of depôts to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it, and the conditions under

<sup>1</sup> her rules made under this section for-(1) Bombay, see Bom R and O

<sup>(2)</sup> Central Provinces, we C P R and O ,

<sup>(3)</sup> United Provinces, see North Western Provinces and Oudh List of Local Rules and Orders Fd 1894, p. 66

For rules mad by the Government of Bengal to regulate the transit of timber on the Gardak River, so far as it flows within the purisdiction of that Government, see Calcutta Gazette, 159%, Pt. I, p. 141

For rules made for the Santhal Parganas as to the management of protected forests under

Gazette, 1904, Pt. I p. 315 For the Punjab River Pules, ser Punjab Gazette, 1979 Pt. I. p. 542, Fed, 1903, Pt. I. p.

(Chapter VIII -Of the Control of Timber and other Forest-produce in Transit)

which such timber or other produce shall be brought to, stored at and removed from such 1 [depôts]:

- (f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches and leaves into any such river or any act which may cause such river to be closed or obstructed.
- (g) provide for the prevention and removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same .
  - (h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or marking of timber, the altering or effacing of any marks on the same, and the possession or carrying of marking hammers or other implements used for marking timber,
- (s) regulate the use of property-marks for timber, and the registration of such marks, prescribe the time for which such registration shall hold good, limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration

<sup>2</sup> [The Local Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area?

42. The Local Government may by such rules prescribe as penalties for the infringement thereof imprisonment for a term which may extend to six months, under section or fine which may extend to five hundred rupees, or both

Double penalties may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or if the offender has been previously convicted of a like offence.

- 43. The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depôt established under a rule made under section 41, or while detained elsewhere, for the purposes of this Act, and no Forest officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently
- 44 In case of any accident or emergency involving danger to any property at any such depôt, every person employed at such depôt, whether by the Government or by any private person, shall render assistance to any Forest cfficer

2 This paragraph was added by the Forest Act, 1890 (V of 1890), s. 8 (4), General Acts, Vol. IV.

Penalty for breach of rules made

Government and Forest officers not liable for damage to forest pro duce at depôt

All persons bound to aid in case of accident at depôt

<sup>1 &#</sup>x27;Depôts' was substituted for 'depôt' by the Pepesling and An ending Act, 1891 (XII of 1891) General Acts Vol IV

# (Chapter IX -Of the Collection of Drift and Stranded Timber)

or Police-officer demanding his aid in averting such danger and securing such property from damage or loss

#### CHAPTER IX

### OF THE COLLECTION OF DRIFT AND STPANDED TIMBER

45 All timber found admit, beached, stranded or sunk.

all wood or timber bearing marks which have not been registered under be deemed section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise, and,

in such areas as the Local Government directs.1 all unmarked wood and

timber. shall be deemed to be the property of Government unless and until any

person establishes his right and title thereto, as provided in this Chapter Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section 51, and may be

brought to such depôts as the Forest-officer may from time to time notify as depô's for the reception of drift timber

The Local Government may, by notification in the local official Gazette, exempt any class of timber from the provisions of this section, and withdraw such exemption

46 Public notice shall from time to time be given by the Forest-officer of claimants of timber collected under section 45 Such notice shall contain a description of drift timber the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim

47. When any such statement is presented as aforesaid, the Forest-officer Procedure on may, after making such inquiry as he thinks fit, either reject the claim after red to such recording his reasons for so doing, or deliver the timber to the claimant

If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto. or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal

Any verson whose claim has been rejected under this section may, "[within On rejection three months] from the date of such rejection, institute a suit to recover possession of the timber claimed by him , but no person shall recover any compen-

timter

elaim prefer

Certain kinds

of timber to

property of Government

until title

and may

be collected accordingly

thereto proved

sich timber. claimant may mate u'e suit. (Chapter IX -Of the Collection of Drift and Stranded Timber)

sation or costs against the Government, or against any Forest officer, on account of such rejection or the detention or removal of any timber, or the delvery thereof to any other person under this section

No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

- 48. If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim if the manner and within the period prescribed by the notice issued under section 46, or on such claim having been so preferred by him and having been rejected, cruits to institute a suit to recover possession of such timber within the further period limited by section 47, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 47, in such other person free from all encumbrances [not created by him]
- 49 The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45, and no Forest-officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently
  - 50 No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made in pursuance of section 51
    - 51. The Local Government may from time to time make rules 2 to regulate the following matters (namely) —
      - (a) the salving, collection and disposal of all timber mentioned in section
      - (b) the use and registration of boats used in salving and collecting timber,
      - (c) the amounts to be paid for salving, collecting, moving, storing and disposing of such timber,
      - (d) the use and registration of hammers and other instruments to be used for marking such timber

The Local Government may from time to time prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both

Government and its officers not liable for dimage to such timber

Payments to be made by claimant be fore tumber is delivered to him

Power to make rules and prescribe penalties

1 m.

(Chanter X -Penalties and Procedure)

#### CHAPTER X

### PENALTIES AND PROCEDURE

52 When there is reason to believe that a forest-offence has been com- Seizure of mitted in respect of any forest produce, such produce, together with all tools, liable to boats carts and cattle used in committing any such offence, may be seized by confiscation, any Forest officer or Police-officer

Every officer seizing any property under this section shall place on such for confisca property a mark indicating that the same has been so seized, and shall, as soon tion as may be make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made

Provided that, when the forest-produce with respect to which such offerce is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may he, a report of the circumstances to his official superior

53 Upon the receipt of any such report the Magistrate shall, with all con- Procedure thereupon.

venient despatch take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law 54 All timber or forest produce which is not the property of Government Forest proand in respect of which a forest offence has been committed, and all tools, etc. when

boats, carts and cattle used in committing any forest offence, shall be liable to liable to

confiscation Such confiscation may be in addition to any other punishment prescribed for such offence

55 When the trial of any forest offence is concluded, any forest produce Disposal, on in respect of which such offence has been committed shall, if it is the property trial for of Government or has been confiscated, be taken charge of by a Forest-officer forestand in any other case may be disposed of in such manner as the Court may offence in direct

conclusion of respect of which it was

56 When the offender is not known, or cannot be found, the Magistrate Procedure may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken known, or charge of by the Forest-officer, or to be made over to the person [whom the cannot be Magistrate deems to be entitled to the same]

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim

57. The Magistrate may, notwithstanding anything hereinbefore con- Procedure as

\_ to rerishable

<sup>1</sup> These words were substituted for the words " whom he deems to be entitled to the same " by the Forest Act, 1990 (V of 1890) a. 11, General Acts, Vol. IV.

# (Chapter X -Penalties and Procedure)

property seized under section 50

tained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold

Appeal from orders under rections 54 55 and 56

58 The officer who made the seizure under section 52, or any of his official superiors or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under section 54, 55 or 56 appeal therefrom to the Court to which orders made by such Magis

Property when to vest in Govern meat

trate are ordinarily appealable and the order passed on such appeal shall be final 59 When an order for the confiscation of any property has been passed under section 54 or 56, as the case may be, and the period limited by section 58 for an appeal from such order has clapsed and no such appeal has been preferred, or when on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or

Saving of power to re-lease pro

such portion thereof, as the case may be, shall yest in the Government free from all incumbrances 60 Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Local Government from directing at any time the immediate release of any property seized under section 52

perty seized Punishment for wrongful 8817 100

61 Any Porest officer or Police officer who vexatiously and unnecessarily

Penalty for counterfeit ing or defac tog marks on trees and seizes any property on pretence of seizing property hable to confiscation under this Act shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both 62 Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code 1

timber and for altering boundary marks

(a) knowingly counterfeits upon any timber or standing tree a mark used by Forest officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person, or

(b) alters defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest officer, or

(c) alters moves destroys or defaces any boundary mark of any forest or waste land to which the provisions of this Act are applied,

shall be punished with imprisonment for a term which may extend to two years or with fine, or with both

Power to arrest without Warrant

63 Any Forest officer or Police officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest offence punishable with imprisonment for one month or upwards

## (Chapter \ -Penalties and Procedure )

Every officer making an arrest under this section shall without unnecessary delay take or send the person arrested before the Magistrate having jurisdic tion in the case Ifor to the officer in charge of the nearest police station]

Nothing in this section shall be deemed to authorize such arrest for any act which is an offence under Chapter IV of this Act, unless such act has been prohibited under section 29 clause (c)

64 Every Forest officer and Police officer shall prevent, and may interfere Power to for the purpose of preventing the commission of any forest offence

prevent commission of offence

65 The Magistrate of the district2 and any Magistrate of the first class Power to try specially empowered in this behalf by the Local Government may try sum marily under the Code of Criminal Procedure 3 any forest offence punishable only with imprisonment for a term not exceeding six months or fine not ex ceeding five hundred rupees, or both

offences summerily

66 Nothing in this Act shall be deemed to prevent any person from being Operation of prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by the rules made under this Act

other laws not herred

Provided that no person shall be punished twice for the same offence

4 67 (1) The Local Government may from time to time by notification in Power' to the official Gazette empower a Forest officer by name or as holding an office, offences

- (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence other than an offence specified in section 61 or section 62 a sum of money by way of compensation for the offence which such person is suspected to have committed and
- (b) when any property has been seized as hable to confiscation to release the same on payment of the value thereof as estimated by such
- (2) On the payment of such some of money, or such value, or both as the case may be to such officer, the suspected person if in custody, shall be discharged the property, if any, seized shall be released, and no further proceed ings shall be taken against such person or property
- (3) A Forest officer shall not be empowered under this section unless he is a Forest officer of a rank not inferior to that of a Ranger and is in receipt of

<sup>1</sup> These words were added by the Forest Act 1990 (V of 1990) a. 12, General Acts, Vol. 13 2 Now District Magistrate-see the Code of Criminal Procedure 1898 (Act 1 of 1898), a. 3 General Acts Vol V

<sup>3</sup> The reference should no v be taken as being made to Act V of 1905 Ceneral Acts Vol. V 4 This sects in was substituted for the original a. 67 by the Perest Act, 1870 [4 of 1870] a. 13. General Acts, Vol. IV

{Chapter X -- Penalties and Procedure Chapter XI -- Cattle trespass Chapter XII -- Of Forest officers }

a monthly stlary amounting to at least one hundred rupees, and the sum of money accepted as compensation under sub section (1), clause (a), shall in no case exceed the sum of fiftr runees.

Presumption that forestproduce belongs to Government 68 When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved

## CHAPTER XI

#### CATTLE TRESPASS

Cattle tres pass Act, 1871, to spply 69 Cattle trespassing in a reserved forest or in any portion of a protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of the 11th section of the Cattle trespass Act, 1871, and may be seized and impounded as such by any Forest-officer or Police officer

Power to alter fines fixed by that Act.

70 The Local Government may from time to time, by notification in the local official Gazette, direct that in heu of the fines fixed by the 12th section of the Act last aforesaid, there shall be levied for each head of cattle impounded under section 69 of this Act such fines as it thinks fit, but not exceeding the following, that is to say—

For each elephant

For each buffalo or earned

For each buffalo or golding pony, colt, filly,
mule, bull, bullock, cow or heifer

For each calf, ass, p g, ram, ewe, sheep, lamh
grat to rich.

ten rupees.

one rupec

eight annas

## CHAPTER XII

## OF FOREST OFFICERS

Local Gov syment may invest Forest. officers with certain power. 71. The Local Government may invest any Forest officer by name, or as holding an office, with the following powers, that is to say —

(a) power to enter upon any land and to survey, demarcate and make a map of the same,

(b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents,

(Chapter XII -Of Forest officers Chapter XIII -Subsidiary Rules)

- (c) power to issue a search warrant under the Code of Criminal Procedure1;
- (d) power to hold an inquiry into forest offences, and, in the course of such maniry, to receive and record evidence
- Any evidence recorded under clause (d) of this section shall be admissible any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person

72 All Forest officers shall be deemed to be public servants within the Forest off ? neaming of the Indian Penal Code 2

cers deemed public see

73 No suit shall he against any public servant for anything done by him Indemnity in good faith under this Act

for acts done in good faith

74 Except with the permission in writing of the Local Government, no Forest-off Forest officer shall, as principal or agent, trade in timber or other forest produce cers not to or be or become interested in any lease of any forest or in any contract for working any forest, whether in British or Foreign territory

#### CHAPTER XIII

#### SUBSIDIARY RULES.

75 The Local Government may from time to time make rules 3 -(a) to prescribe and limit the powers and duties of any Forest officer make rules.

Additional .

- under this Act 4 . (b) to regulate the rewards 5 to be paid to officers and infor ers out of the proceeds of fines and confiscations under this Act .
- (c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons, and,
- (d) generally, to carry out the provisions of this Act 6

76 Any person breaking any rule under this Act, for the breach of which Penalties for no special penalty is provided, shall be punished with imprisonment for a term rules.

1 Read now the Code of Criminal Procedure, 1898 (Act V of 1899), General Acts, Vol. V 2 General Acts Vol. L.

6 For rules under this clause as to measurement and registration of hoats in the burdarium Division, see Calcutta Gazette, 1906, Pt. I. p. 1657

Rules when

of law

(Chapter XIII -Subsidiary Rules Chapter XIV -Miscellaneous)

which may extend to one month, or fine which may extend to five hundred

rupees, or both 177 All rules made by the Local Government under this Act shall be pubto have force lished in the local official Gazette, and shall thereupon, so far as they are con-

sistent with this Act, have the force of law : Provided that no rule made under section 27, 31 or 41 shall be so published

CHAPTER XIV

## MISCELLANEOU4

Persons 78 I very person who exercises any right in a reserved or protected forest bound to as sist Forest or who is permitted to take any forest produce from, or to cut and remove officers and timber or to pasture cattle in, such forest, and Police offi cers

without the previous sanction of the Governor General in Council

every person who is employed by any such person in such forest, and every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community.

shall be bound to furnish without un iccessary delay to the nearest Forestofficer or Police officer any information he may possess respecting the com mission of, or intention to commit, any forest offence and shall assist any Forest officer or Police officer \* \* \* 2 -

(a) in extinguishing any fire occurring in such forest,

(b) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest,

3 [and shall assist any Forest officer or Police officer demanding his aid-]

(c) in preventing the commission in such forest of any forest offence, and,

(d) when there is reason to believe that any such offence has been com

mitted in such forest, in discovering and arresting the offender 79 If the Government and any person be jointly interested in any forest

or waste land or in the whole or any part of the produce thereof, the Local Government may from time to time either --

- (a) undertake the management of such forest, waste land or produce, accounting to such person for his interest in the same, or
- (b) issue such regulations for the management of the forest, waste land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein

## (Chapter XIV -Miscellaneous)

When the Local Government undertakes, under clause (a) of this section. the management of any forest, waste land or produce, it may from time to time by notification in the local official Gazette, declare that any of the provisions contained in Chapters II and IV of this Act shall apply to such forest waste land or produce and thereupon such provisions shall apply accordingly

80 If any person be entitled to a share in the produce of any forest which Fallure to is the property of Government or over which the Government has proprie tary rights or to any part of the forest produce of which the Government is which a entitled, upon the condition of duly performing any service connected with share in such forest, such share shall be liable to confiscation in the event of the fact Government being established to the satisfaction of the Local Government that such service forest injuried is no longer so performed

perform service for produce of

Provided that no such share shall be confiscated until the person entitled thereto and the evidence (if any) which he may produce in proof of the due per formance of such service have been heard by an officer duly appointed in that behalf by the Local Government

81 All money payable to the Government under this Act, or under any Recovery of rule made under this Act or on account of the price of any forest produce, or to Govern of expenses incurred in the execution of this Act in respect of such produce, ment may if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue

82 When any such money is payable for or in respect of any forest-produce, Lies on the amount thereof shall be deemed to be a first charge on such produce, and duce for such produce may be taken possession of by a Forest officer until such amount such money has been paid

If such amount is not paid when due the Forest officer may sell such pro duce by public auction and the proceeds of the sale shall be applied first in dis charging such amount

sell such produce

The surplus (if any) if not claimed within two months from the date of the sale by the person entitled thereto shall be forfeited to Her Majesty

83 Whenever it appears to the Local Government that any land is required Land refor any of the purposes of this Act, such land shall be deemed to be needed this Act to for a public purpose within the meaning of the Land Acquisition Act 1870,1 te deemed section 4

ired under to be needed

284 When any person, in compliance with any rule under this let, binds Lecorry of himself by any instrument to perform any duty or act, or covenants by any under bood.

for a public PUTPOR under Land Acquisition 1ct 18"0.

<sup>1</sup> Read now the Land Acquis tion Act, 1894 (I of 1894) -- ee a 2 of the Act-General Acts Vol IV 2 S S4 was added by the Forest Act 1890 (Vol 1890) a 14 General Acta Vol IV

(Chapter XIV -Miscellaneous Schedule -Enactments repealed)

instrument that he, or that he and his servants and agents, will abstain from any act, the whole sum mentioned in such instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872, be recovered from him IX of in case of such breach as if it were an arrear of land revenue

## SCHEDULE

(See section 1)

## ENACTMENTS REPEALED.

| Number and year of Act or<br>Regulation | Title                                                                                                | Extent of repeal                                            |  |  |  |
|-----------------------------------------|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|--|--|--|
| 2Act VII of 1865                        | An Act to give effect to rules<br>for the management and pre-<br>servation of Government for<br>csts | So much as has not been re pealed.                          |  |  |  |
| <sup>8</sup> Act VII of 1869            | An Act to give validity to cer<br>tain rules re ating to forests in<br>British Burma                 | The whole                                                   |  |  |  |
| SAct XIII of 1873                       | An Act to amend the law relating to timber floated down the rivers of British Burma                  | So much as has not been repealed.                           |  |  |  |
| 3 Regulation IX of 1874                 | The Araken Hill District Laws<br>Regulation 1874                                                     | So far as it relates to Acts VII<br>of 1865 and VII of 1869 |  |  |  |

<sup>1</sup> Supra

## THE SF4 CUSTOMS ACT 1878

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  Issue of licenses and registration of cargo-boats
- Power to require goods to be eighed or measured on board before landing or after shipment

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- 82 Goods not to leave ship unless entered in manifest
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- 84 Power to land small parcels
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- 85 Power to pernut immediate discharge
- 86 Entry for home consumption or warehousing
- 87 Assessment of duti ble goods
- 88 Proce u e in case o g o t not cea ed or war housed within four months after entry of vestel

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Proviso

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- 90 Application to warehouse
- 91 Form of application.
- 92 Warehousing bond. Form of bond
- 93 Forwarding of goods to "archouse.
- 94 Receipt of goods at warehouse
- 95 Goods how warehoused
- 96 Warrant to be given when goods are warehoused. Form of warrant.

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### STEERS

- 9" Lores of Castoms-officer to our are varientess.
- 9. Forest to cause packages lowered in variables to be oriented and est-
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- 105 Power to -more mous from one nor to anorage
- Products

  106 Transmission it account of mous to officers it poet it destination.
- Bond or one arm in and in three business to Bemover may enter into a general bond.
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- 119 Procedure on failure to pay duty, etc
- 120 Noting removal of goods
- 121 Register of bonds

Cancellation and return of bonds

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- 122 Power to remit duties on warehoused goods lost or destroyed
- 123 Responsibility of warehouse keeper Compensation for loss or injury
- 124 Public warehouse to be locked
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- 126 Expenses of carriage, packing, etc., to be borne by owners
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#### TRANSHIPMENT

- 128 Power to permit transhipment without payment of duty
- 129 Superintendence of transhipment
- 130 Subsidiary rules as to transhipment
- 131 Entry and warehousing, on arrival, of goods transhipped under section 123, clause 2
- 132 Transhipment of provisions and stores from one vessel to another of same owner without payment of duty
- 133 Levy of transhipment fee
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## EXPORTATION OR SHIPMENT AND RE LANDING

- 136 No goods to be shipped, etc , till entry outwards of vessel
- 137 Clearance for shipment
- 138 Bond required in certain cases before exportation.
- 139 Additional charge on goods cleared for shipment after port clearance granted
- 140 Notice of non shipment or re landing and return of duty thereon.
- 141 Goods re landed or transhipped from a vessel returning to port, or putting into another port
- 142 Vessel returning to port may enter and land goods under import-rules.

113 Landing of cargo during repairs

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- 144 Rules for removal of spirit from distillery without payment of duty for exportation
- 145 Spirit for export to be taken direct from distillery to Castom house under pass
- 146 Cauging and proving of spirit
- 147 Duty to be recovered on any deficiency in spirit under bond
- 148 Duty on spirit exported under bond from one Indian port to another
- 149 Removal for local consumption of spirit intended for exportation

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150 Drawback of excise duty on spirit exported

#### Mascellaneous

- 151 Differential duty to be levied in certain cases
- 152 Rum shrub, etc., how charged with duty Provisions respecting spirit applied to such liquors
- 153 Conditions of drawback and remission of duty on spirit
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#### COASTING TRADE

- 156 Chapters VII, IX, X and part of XIII mapplicable to consting trade
- 157 Power to regulate coasting trade
- 158 Coasting vessels to deliver manifest and obtain port clearance before leaving port of lading
- 159 Delivery of manifest, etc., on arrival

- 160 Departure from intermediate port
- 161 Power to require bond before port clearance is granted
- 162 Discharge of cargo
- 163 Goods on coasting vessels, if excisable not to be unladen without permission
- 164 Grant and revocation of general pass
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## OFFENCES AND PENALTIES

- 167 Punishments for offences -
  - I For infringing rules made under Act
  - 2 For landing or shipping goods at unauthorized port, etc
  - 3 For shipping landing, concealing, etc., contrary to Act
    For being on board vessel on which offence is committed
    under No. 4
  - 4 For vessel which has been in port with a cargo afterwards being found in ballast and cargo unaccounted for
  - 5 For masters of tug steamers or pilot vessels receiving or discharging any goods without due authority from seagoing vessel
  - 6 For not bringing to at boarding station
  - 7 For vessel removing from place of mooring, or unlading, without due authority
    - For vessel not being moored in accordance with directions under section 17
  - 8 For goods being imported or exported contrary to prohibition
  - 9 For unauthorised declaration as to value of goods
  - 10 For not exporting or re landing drawback goods
  - 11 For unauthorised lading or unlading of wine, spirit, etc.
  - 12 For entering goods for drawback, which are less in value than the amount of drawback claimed
  - 13 For proceeding inward beyond fixed place before delivery of manifest
  - 14 For wilfully omitting to deliver manifest when vessel anchors below reporting station
  - 15 For like omission when reporting station has not been fixed.
  - 16 For master delivering unsigned or untrue manifest.

## 167. Punishments for offences-continued

- 17 For not being able to account for missing goods or deficiency of goods
- 18 For refusing to receive or countersign manifest
- 19 For breaking bulk without permission
- 20 For false entry or fraudulent alteration in bill of lading For not making bill before leaving place where goods shipped. For cargo being stored, destroyed or thrown overboard and not satisfactorily accounted for
- 21 For attempting to depart without port clearance
- 22 For departing without port clearance
- 23 For pilot taking charge of vessel without port clearance
- 24 For refusing to receive officer of Customs on board
- 25 For disobeying section 63
- 26 For masters resisting search, removing marks etc, placed by Customs officer, secretly conveying away goods or opening hatchway after fastened by Customs officer
- 27 For lading in absence of Customs officer
- 28 For removing goods contrary to section 70, 72 or 75
- 29 For sending goods without, or in excess of, boat note
- 30 For non receipt or non delivery or non signing of boatnote
- 31 For not landing or shipping goods in accordance with section 73, 77 or 78
- 32 For goods being found in unlicensed cargo boats
- 33 For discharging goods not duly entered in manifest
- 34 For goods being found concealed and unaccounted for
- 35 For goods found not agreeing in description and quantity with entry in manifest
- 36 For removing goods after landing and before due entry
- 37 For goods being brought to be passed through Custom housewhen packages differ from description given, contents are misdescribed or mis stated, or other goods are concealed amongst them
- 38 For misdescription of goods
- 39 For taking or passing goods without entry
- 40 Prohibited or dutiable goods concealed in baggage
- 41 For improper carrying into warehouse
- 42 For withholding or removing, before examination, goods entered to be warehoused
- 43 For warehousing goods improperly
- 44 For refusing to open private warehouse when duly required.
- 45 For neglecting to stow goods properly in warehouse

#### 167 Punishments for offences—continued

- 46 For importer or owner of warehoused goods clandestinely gaining access
- 47 For opening or altering warehoused goods
- 48 For deficiencies in contravention of section 98 or 100 of goods in a private warehouse
- 49 For failing to produce goods when required
- 50 For concealing removing abstracting or transferring from one package to another goods duly warehoused
- 51 For excess, in private warehouse over registered quan-
- 52 For removing warehoused goods improperly
- 53 For taking goods out of warehouse without paving duty
- 54 For infringing rules or orders regarding transhipment
- 55 For shipping roods before entry outwards
- 56 For shipping goods not in shipping bill
- 57 For not giving notice of short shipping or relanding as reanired by section 140
- 58 For landing at place other than that for which goods have been cleared
- 59 For deficiency in goods on which drawback has been paid, on board vessel referred to in section 142
- 60 For irregularly relanding spirituous liquors
- 61 For contravening rules relating to spirit
- 62 For contravention of rules made under section 157
- 63 For, contrary to such rules touching at foreign port or not declaring in writing that vessel touched at foreign port.
- 64 For non-compliance with section 158, 159 or 160
- 65 For failure to produce certificate 66 For master of coasting vessel violating any conditions of
- general pass 67 For contravention of the provisions of section 165
- 68 For dutiable goods entered in cargo boat not being found. or for not entering
- 69 For failure to keep cargo-book correctly, etc.
- 70 For breach in respect of lading carrying coastwise and unlading
- 71 For refusal to produce documents
- 72 For making false declaration, destroying or refusing to produce document, or refusing to answer questions
- 73 For possession of smuggled goods
- 74 For searching persons on insufficient grounds
- 75 For Customs officers guilty of breach of duty

- 167. Punishments for offences-concluded
  - 76 For Customs officers committing or conniving at frauds against Customs revenue
  - 77 For neglect of Police officer to give notice
  - 78 For obstruction to Customs officers
  - 79 For Customs officer disclosing particulars learnt officially concerning goods, or showing or parting with samples
  - 80 For acting as agent without authority
- 168 Packages and contents included in confiscation of goods Also conveyances and animals used in removal

Tackle, etc., included in confiscation of vessels

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## PROCEDURE RELATING TO OFFENCES, APPEALS, ETC.

- 169 Power to search on reasonable suspicion
- 170 Persons may, before search, require to be taken before Magistrate or Customs collector
- 171 Power to stop vessels, carts, etc., and search for goods on reasonable suspicion
- 172 Power to issue search warrants
- 173 Persons reasonably suspected may be arrested
- 174 Persons arrested to be taken to nearest Magistrate or Customs collector
- 175 Persons taken before Magistrate may be detained or admitted to bail.
- 176 Persons escaping may be afterwards arrested
- 177 Persons in Her Majesty's Navy, when arrested, to be secured on board until warrant procured
- 178 Seizure of things liable to confiscation
- 179 Things seized how dealt with
- 180 Procedure in respect of things seized on suspicion
- 181 When seizure or arrest is made, reason in writing to be given
- 182 Adjudication of confiscations and penalties
- 183 Option to pay fine in lieu of confiscation 184 On confiscation, property to vest in Her Majesty
- 185 Levy of penalty for failure to bring to
- 186 Penalty under Act not to interfere with punishment under other law.
- 187 Offences not specially provided for how tried
- 188 Appeal from subordinate to Chief Customs authority
- 189 Deposit, pending appeal, of duty demanded
- 190 Power to remit penalty or confiscation

#### Sections

- 191 Revision by Local Government
- 192 Goods on which penalty incurred not to be removed till payment, Other goods of person liable to fine or penalty may be detained
- 193 Enforcement of payment of penalty

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- 194 Power to open packages and examine goods
- 195 Power to take samples of goods
- 196 Owner to pay expense incidental to compliance with Customs law.
- 197 No compensation for loss or injury except on proof of neglect or wilful act
- 198 Notice of proceedings
- Limitation
- 199 Wharfage fees
- 200 Duplicates of documents may be granted on payment of fee
- 201 Amendment of documents
- 202 Custom house agents
- 203 Agent to produce authority if required
- 201 Rules to be notified
- 205 Cancellation of notifications
- 206 Remission of duty and compensation to owner in certain cases
- 207 Saving of Calcutta Port Commissioners' and Bombay Port Trust Acts.

## SCHEDULE

## PART I -ACTS REPEALED

## PART II -FORMS-

- A -Form of Bond for Import duty
- B-Form of Bonded Warehouse Warrant
- C -Form of Bond for the Removal of Spirit from a Licensed Distillery.

618 Sea Customs. [1878: Act VIII.

(Chapter I —Preliminary)
ACT No VIII of 1878 1

[8th March 1878.]

An Act to consolidate and amend the law relating to the levy of Sea Customs duties.

Sea Customs duties.

Whereas it is expedient to consolidate and amend the law relating to the

## CHAPIER I

## PRELIMINARY.

Short title 1 This Act may be called the Sea Customs Act, 1878

levy of Sea Customs duties, It is enacted as follows -

Preamble

Local extent

Commence

Repeal of enactments.

repealed Saving of

appoint.

ments, etc.

Interprets

tion

" Chief

Customs.

References to enactments

ment

It extends to the whole of British India, and shall come into force on the first day of April 1878

2 The Acts mentioned in <sup>2</sup> [Part I of the Schedule] hereto annexed are repealed to the extent specified therein

All references to any of the said Acts in Acts passed subsequently thereto, shall be read as if made to the corresponding provisions of this Act

All appointments, rules, declarations, evemptions and delegations made, powers conferred, forms and conditions prescribed, values, fees, rates and periods fixed, and notifications, instructions, directions, prohibitions, passes and because issued under any Act hereby repealed shall, if the same are in force at the time this Act comes into force, be deemed to have been respectively made, conferred, prescribed, fixed and issued under this Act, in so far as they are consistent herewith.

erewith

3 In this Act, unless there be something repugnant in the subject or con-

text,—
(a) "Cluef Customs authority" denotes the person authorized to

ten of today 1876, Pt V, p 1402, for

for discussions in Council, for, disd, 1878 Supplement, to be read with and taken as As to application of the of 1890, General Most

The Act has been declared to be in force in Upper Burma generally (except the Shan States) by the Burma Laws Act 1898 (VIII of 1898) s. 4 (1) Bur Code
Ss 144 to 154 have been declared to be in force in the Angul District, see the Angul District Regulation, 1894 (1 of 1894) s 3 Ben. Code

These words were substituted for the words the first schedule" by the Repealing and Amending Act 1801 (VII of 1801), General Acts, Vol 1 1 1 2 Jumps, the Fighanesia Commissions has been appointed the Chief Custom-authority

chief conind Sylhet Pt I, p 5.

## (Chapter I - Preliminary)

exercise, subject to the Local Government, the chief control in matters relating to Sea Customs in any place in which this Act

operates (b) "Chief Customs officer" denotes the Chief Executive Officer of Sea. "Chief customs for any port to which this Act applies

(c) "Customs collector" includes every officer of Customs for the time "Customs being in separate charge of a custom house, or duly authorized collector to perform all or any special, duties of an officer so in charge :

(d) "Customs port" means ary place except Aden declared under section "Customs

11 to be a nort for the shipment and landing of goods (e) "foreign port" means Aden and any place beyond the limits of "Foreign port "

British India1 (f)2 "vessel" includes anything made for the conveyance by water "Vessel"

of human beings or property

(q) "coasting vessel' denotes any vessel proceeding from one customs "Coasting port to another customs port, whether touching at any intern e diate forign poot or not, or proceeding from or to a customs port to or from a place declared to be a port under section 12

(h) " master," when used in relation to any vessel, means any person, "Master" except a pilot or harbour-master, having command or charge

of such vessel (i) "Warehousing port" means any customs-port declared under section "Warehous-14 to be a warehousing port

(1) "Warehouse" denotes any place appointed or licensed under section 15 or section 16

4 When any person is expressly or impliedly authorized by the owner Agent of of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, and such authorization is approved by the Customs collector. such person shall, for such purposes, be deemed to be the owner of such goods

5 Anything which a master is required or empowered to do under this Act may, with the express or implied consent of such master and the approval agent may of the Customs collector, be done by a ship's agent 0 .L . 3 The right and 1, Th

ing port."

" Ware house "

owner of goods to be owner for certain nur

poses. When ship's act for master

ag Copin - Dambar, pop Casas a STLD a 1004 a 1 cons pt 7

Cf definition in a 3 (2) of the General Clauses Act, 1897 (X of 1897), General Acts, Vol.

(Chapter II .- Appointment and Powers of Officers, etc.)

## CHAPTER II.

## APPOINTMENT AND POWERS OF OFFICEPS, ETC.

Appointment of Customs officers

6 The Local Government of every place in which duties of sea-customs are leviable may appoint 1 such persons as it thinks fit to be officers of Customs, and to exercise the powers conferred, and to perform the duties imposed, by this Act on such officers

Suspension and dismis-

Every person so appointed may be suspended or dismissed by the Local Government which appointed him

sal of such officers Delegation of powers under sec tion 6 Suspension and dismissal of subords na\*e officers. Performance

of duties of

Customs-col

lector where no custo m

house

Power to make rules

7 The Local Government may delegate 2 to any officer of Customs any of the powers vested in it by the first clause of section 6

Every person appointed in exercise of such delegated power may be sus. pended or dismissed by the officer who appointed him

8 At any place for which there is no custom-house, the Collector of the district and the officers subordinate to him shall, unless the Local Government otherwise directs, 3 perform all duties imposed by this Act on a Customs. collector and other officers of Customs

9 The Chief Customs authority may from time to time, with the sanction of the Local Government, make rules 4 consistent with this Act-

(a) prescribing and limiting the powers and duties of officers of Customs;

(b) regulating the delegation of their duties by such officers, and

(c) generally to carry out the provisions of this Act

Customs.

10 No Chief Customs-authority or Chief Customs-officer, and no other

and

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1 For not for + -

<sup>4</sup> For rules made under a 9 for-

<sup>(1)</sup> Bengal, see Ben. R. and O.,
(2) Burns, see Bur R. M.,
(3) Rombay, see Bom. R. and O., and
(4) Madras, see Mad. R. and O.

For rules under s. 9 in conjunction with s. 72 (b), for the remomeration of preventive officers for overtime work in the port of Calcutta, see Calcutta Gazette, 1906, Pt. I, p. 784 As to rules for Bengal in conjunction with as 105 and 130 for the weighment and removal by rail or water of non duty paid salt from ship board see Ben. R and O for Burma, as to the

(Chapter III - Appointment of Ports, Wharles, Custom-houses, Warehouses, and Boardeng and Landeng Stations )

officer of Customs whom such Chief authority or Chief officer deems it necessary to exempt on grounds of public duty, shall be compelled to serve on any jury or inquest, or as an assessor

empted from service on THEY OF monest or as assessors

## CHAPTRE III

APPOINTMENT OF PORTS, WHARVES, CUSTOM-HOUSES, WAREHOUSES, AND BOARDING AND LANDING STATIONS

11 The Local Government may from time to time, by notification in the Power to official Gazette,1-(a) declare the places within the territories administered by it which alone

appoint ports. wharves and enstom houses

- shall be ports for the shipment and landing of goods: (b) declare the limits of such ports ,
- (c) 2 appoint proper places therein to be wharves for the landing and shipping of goods, or of particular classes of goods .
- (d) declare the limits of any such wharf.
- (e) alter the name of any such port or wharf, and
- (f) declare what shall, for the purposes of this Act, be deemed to be a custom house, and the hmits thereof 8
- 12 The Local Government may also from time to time in like manner Power to declare places to be 4 ports for the carrying on of coasting trade with customs. to be ports norts, or with any specified customs port, and for no other purpose.

13 The Governor General in Council may from time to time direct, by noti. Power to

declare places for coasting

1 For notifications issued under this section in-

(1) Bengal see Ben. R and O Cazette of India, 1905, Pt. II, p. 658, for shipment of husked and unhusked rice

(2) Bonibay, see Born R. and O (3) Burma see Bur R. M. Burma Gazette, 1907, Pt. I, p. 210, and

(4) Ma ras, see Mad, R and O

2 For places under the Port Commissioners Calcutts, appointed to be wharves for the land no

(2) Bombay, see Bom. R. and O

(3) Madras, see Mad. R. and O and

(4) Eastern Bengal and Assam, see E. B and Assam Gazette, 1908, Pt II, p 647

<sup>4</sup> For notifications issued under a, 12 in-(1) Bengal, see Ben, R. and O

(Chapter II .- Appointment and Powers of Officers, etc.)

## CHAPTER II.

#### APPOINTMENT AND POWERS OF OFFICERS, ETC

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officers Delegation of powers under sec tion 6 Suspension

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and dismissal of subords nate officers Performance of duties of Customa col lector where no custo m

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(c) generally to carry out the provisions of this Act 10 No Chief Customs nuthority or Chief Customs officer, and no other

Customs-

1 For notifications issued under the powers conferred by a 6 in-

(1) Bombay, see Bom. R. and O (2) Burma, see Bor. R. M. Burma Gazette, 1908, Pt. I, p. 701, and

(3) Madras, see Mad, R and O

2 For notifications delegating powers referred to in a 7 in-

(1) Bombay, see Bom R and O, (2) Madras see Mad. R and O and

(3) Burma ece Burma Garette, 1907, Pt. I, p 360 3 In Madras officers of the Salt, Abhari and Customs Departments have been directed to perform the duties imposed by se 174 and 182 in regard to imported intoxicating drugs propared from the hemp plant see Fort St George Gazette, 1901, Pt I, p 95

4 For rules made under s. 9 for-

(1) Bengal, see Ben. R and O . (2) Burma, see Bur R M .

(3) Bombay, see Bom. R and O , and (4) Madras, see Mad. R, and O

For rules under s 3 in conjunction with s 72 (b), for the remuneration of preventive

621

(Chapter III - Appointment of Ports, Wharves, Custom-houses, Warehouses, and Roarding and Landing Stations)

officer of Customs whom such Chief authority or Chief officer deems it neces- officers ex sary to exempt on grounds of public duty, shall be compelled to serve on any empted from mry or monest, or as an assessor

service on jury or inquest or s A95635018

## CHAPTRE III

APPOINTMENT OF PORTS, WHARVES, CUSTOM HOUSES, WAREHOUSES, AND BOARDING AND LANDING STATIONS.

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appoint houses.

- shall be ports for the shipment and landing of goods . (b) declare the hmuts of such ports .
- (c) 2 appoint proper places therein to be wharves for the landing and shipping of goods or of particular classes of goods .

(d) declare the limits of any such wharf .

- (e) alter the name of any such port or wharf, and
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(1) Bengal see Ben. R. and O

(2) Rombay, see Bom. R. and O. (3) Madras see Mad. R. and O and

(4) Eastern Bengal and Assam. see E. B and Assam Gazette, 1908 . Pt II, p 647

(Chapter III - Appointment of Ports, Whates, Custom houses, Warehouses, and Boarding and Landing Stations )

declare that foreign ports shall be regarded as customs ports for cer tain purposes Power to declare ware housing ports

Power to

public ware

appoint

houses

fication 1 in the Gazette of India, that all goods or any specified class of goods imported from or exported to any foreign port to or from a customs port shall, with such limitations and on such conditions (if any) as he thinks fit, be treated for any of the purposes of this Act as goods imported from or exported to a customs port, as the case may be

14 The I ocal Government may from time to time declare, by notification in the official Gazette, that any customs port shall be a warehousing port2 for the purposes of this Act

15 At any warehousing port, 3 the Chief Customs-authority may, from time to time, 4 appoint public warehouses wherein dutiable goods may be deposited without payment of duty on the first importation thereof, and may cancel such appointment

Power to license pri vate ware houses

16 At any warehousing port 5 the Chief Customs officer may from time to time license private warehouses6 wherein dutiable goods may be deposited as aforesaid

Every application for a license for a private warehouse shall be in writing, Form of application and shall be drawn up in such form as is from time to time prescribed by the for license Chief Customs authority, and shall be signed by the applicant

Rovo ation of l censo

Every license granted under this section may be cancelled on conviction of the licensee of any offence under this Act relating to warehouses, unless it is otherwise provided in the license, or on the expiration of one month's notice in writing given to the licensee by the Chief Customs officer

Stations for Customs officers to board and land.

17. The Chief Customs authority may from time to time appoint, in or near any customs port, stations or limits at or within which vessels arriving at or departing from such port shall bring to for the boarding or landing of officers of Customs, and may, unless separate provision therefor has been

<sup>1</sup> For orders assued under 8, 13 see Gen. R. and O Ed. 1905

<sup>2</sup> For notifications under the powers conferred by this section in-

<sup>(1)</sup> Bengal, see Ben. R and O

<sup>(3)</sup> Burma see Bur R M and (4) Madras see Mad. R and O

<sup>3</sup> As to power of Chief Customs authority to appoint a public or license a private warehouse at places other than warehousing ports see s 4 (1) of the Inland Bonded Warehouses Act, 1896 (VIII of 1896) General Acts, Vol. IV

For instances of notifications appointing warehouses in—

Bengal see Ben. P and O Calcutta Gazette 1905 Pt. I. p. 1297, Bombay, see Bom. R and O and Burma see Bur R M Burma Gazette 1903 Pt I, p 404

<sup>5</sup> As to power of Chief Customs authority to appoint a public or heense a private warehouse at places other than warehousing ports see a. 4 (f) of the Inland Bonded Warehouses Act 18% (XII of 1896) General Acts Vol. 13 6 No arms ammunition or military stores may be deposited in any warehouse heensed under

s. 16 without the senetion of the Local Government, see Indian Arms Act, 1878 (AI of 1878), s. 7. infra

(Chapter IV -Prohibitions and Restrictions of Importation and Exportation )

made under the Indian Ports Act, 1875,1 direct at what particular place in any such port vessels, not brought into port by pilots, shall anchor or moor 2

#### CHAPTER IV

PROPERTIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION

- 18 No goods specified in the following clauses shall be brought, whether Probibitions. by land or sea, into 3 British India -
  - (a) any book printed in infringement of any law in force in British India on the subject of copyright, when the proprietor of such copyright. or his agent, has given to the Chief Customs authority a notice in writing that such copyright subsists, and a statement of the date on which it will expire
  - (b) counterfeit com or com which purports to be Queen's com of India. or to be coin made under the Native Coinage Act, 1876,5 but which is not of the established standard in weight or fineness
  - (c) any obscene book, pamphlet, paper, drawing, painting, representation. figure or article
  - 6 [(d) goods having applied thereto a counterfeit trade mark within the meaning of the Indian Penal Code, " or a false trade description within the meaning of the Indian Merchandise Marks Act, 1889 1
  - 8 ((e) goods made or produced beyond the limits of the United Kingdom and British India, and having applied thereto any name or trade mark being, or purporting to be, the name or trade-mark of any

<sup>1</sup> See now the Indian Ports Act 1908 (XV of 1908) General Acts Vol. VI.

<sup>2</sup> For notifications issued under s. 17 in-

<sup>2</sup> For notinations is save under a 7 m(1) Bengal, see Ben. R and O,
(2) Bombsy Presidency, see Bom. R, and O
3 See notes to a. 3 (c), up:
4 See the Indian Copyright Act 1847 (A.M. of 1847), General Acts, Vol. I, also the enactments enumerated under the head 'Copyright' on page 106 of the Index to the Indian Statutes, Ed. 1897 5 Supra

<sup>6</sup> Cls. (d) and (e) were substituted for the original cl. (d) by a 10 (f) of the Indian Merchan d so Marks Act 1889 (IV of 1889), General Acts, Vol. III. 

a The words "or being a colourable imitation of " were repealed by the Sea Customs (Amendment) Act, 1904 (AVI of 1904). General Acts. Vol. VI.

(Chapter IF.—Prohibitions and Restrictions of Importation and Exporta-

- person who is a manufacturer, dealer or trader in the United Kingdom or in British India unless—
- (i) the name or trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and
- I(in) the country in which that place is situated is in that indication indicated in letters as large and conspicuous as any letter in the name or trade-mark, and in the same language and character as the name or trade-mark ?
- 2(f) piece goods, such as are ordinarily sold by length or by the piece, which—
  - (i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and
  - (ii) have been manufactured beyond the limits of India, or,
  - (iii) having been manufactured within those limits have been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881 <sup>3</sup>

19 The Governor General in Council may from time to time, by notification in the Gazette of India, \*prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of British India or any specified part of British India

5 19A (I) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under this Act, the Chief Customs officer or other officer appointed by the Local Government in this behalf may require the regulations under this section whether as to information, security, conditions or other matters, to be compiled with, and may

Detention an I confiscation of g sods whose im portatio i is prohibited.

Power to

of goods

prohibit or

restrict im

portation or exportation

<sup>1</sup> These words were s
a trusted are by s 3 c

1 These words were s
Acts Amendment

Act 1831 (IX of 1831)
2 CL (f) was added t = 1889 (IV of 1889),
C ne al Vis V 1 IV

<sup>3</sup> General Acts Vol. III

Acts Vol. It For notification appointing the Assistant Political Resident Aden, for the time being in charge of the Abkari Department to be the offseer at Aden authorised to set under this section, see possibay Government Castette 1909, Pt. I, p. 524

## (Chapter I -Levy of and Fremption from, Customs duties )

satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported

- (2) The Governor General in Council may 1 make regulations either general o special respecting the detention and confiscation of goods the importation of which is prohibited and the conditions if any, to be fulfilled before such detention and confiscation and may by such regulations determine the informa tion notices and security to be given and the evidence requirite for any of the purposes of this section and the mode of verification of such evidence
- (3) Where there is on any goods a name which is identical with, or a colour able imitation of the name of a place in the United Kingdom or British India that name unless accompanied in equally large and conspicious letters and in the same language and character by the name of the country in which such place is situate shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom or British India
- (4) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods
- (5) The regulations may provide for the informant reimbursing any public officer and the Secratary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention
- (6) All regulations under this section shall be published in the Gazette of India and in the Calcutta Fort St George, Bombay and Burma Gazettes

## CHAPTER V

## LEVY OF, AND EXEMPTION FROM, CUSTOMS DUTIES

20 Except as hereinafter provided, customs duties shall be levied at Goods dutiable such rates as may be prescribed by or under any law 2 for the time being in force on-

- (a) goods imported or exported by sea into or from any customs port from or to any foreign port ,
- (b) opium salt or salted fish imported by sea from any customs port into any other customs port,
- (c) goods brought from any foreign port to any customs port, and without payment of duty, there transhipped for, or thence carried to, and imported at, any other customs port . and
- (d) goods brought in bond from one customs port to another

For regulations in respect of piece goods made under this sub-section see Con R. and O Gazette of Int a 1891 Pt. I p. 187 and shif 1899 Pt. I p. 714 ib d 1897 Pt. I p. 401
 Se the Indian Tariff Act 1894 (VIII of 1894) General Acts Vol. IV

Proviso.

Provided that no such duties shall be levied on goods belonging to the Government.

Goods partially composed of dutable artı.les

21 Except as otherwise expressly provided by any law for the time being in force, goods whereof any article hable to duty under this Act forms a part

Power to

or ingredient shall be charceable with the full duty which would be payable on such goods if they were entirally composed of such article, or if composed of more than one article hable to duty, then with the full duty which would be payable on such goods if they were entirely composed of the article charged with the highest rate of duty 22 The Governor General in Council may from time to time, by notification

fix tares Talmes

in the Gazette of India fix, for the purpose of levvine duties, tariff values of any goods exported or imported by sea on which customs-duties are by law imposed and alter any such values fixed I by any lariff Act 2 for the time being in force. 23 The Governor General in Council may from time to time by notifi

General DONE to exempt from

cation in the Gazette of India 3 exempt any goods imported into or exported from Br tish India or into or from any specified port therein from the whole or any part of the customs duties leviable on such goods. The Local Government may, & [with the previous sanction of the Governor

CUSTOUS. dettes. Preer to authorae, lar ere lal CRNCS, CX emption

from duty Barrare in

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General in Council ] by special order in each case exempt from the payment of duty, under curcumstances of an exceptional nature, to be stated in such ord,r any goods on which custom -duties are levialle. 24 The Customs-collector man subject to any general rules relating to

the landing and shipping of pas engers' barrage and the pasting of the same

through the curron-house, which may be made under section 75 pass fre of dut any barrare in actual use and for this purpose may determine subject to any such rules whether any goods shall be treated as baggage in artical use, or as goods subject to duty De-imported 25 H good, produced or manufactured in British India be imported into any custome nort from any foreign nort such goods shall be liable to all the

country. reedpee. duties, ecuditions and restrictions (if any) to which good, of the like kind and value not so produced or manufactured are lable on the first importation thereof Provided that if such importation takes place within three years after

the exponetion of each goods and it is proved to the satisfaction of the Customs-collastor that the presents in such good, has continued in the person by whom or on whose account, they were exported, the goods may be admitted

Proviso

without payment of duty 1 or Carete "India 1917 Ph. L.p. 1145 Fed 1905 Ph. I. pp. 202-203-677 \* See now the Indian Tariff & t. 1894 (VIII of 1894) General Acts. Vol. IV

a 'er Gen R. & O 4 There words were meeted by a 11 of the In lish Tariff Act, 1834 (VIII. Are Vo. IV

(Chapter V .- Levy of, and Fremption from, Customs duties)

26 Any goods produced or manufactured in British India which have been Excise duty exported therefrom, and on the exportation of which any drawback of excise on importahas been received, shall on being imported into any customs port, be subjected, tain country unless the Chief Customs authority in any particular case otherwise directs goods by special order, to payment of excise duty, at the rate to which goods of the like kind and quality are liable at such port

27 All goods derelict actsam, flotsam and wreck, brought or coming into Goods dere any place in British India, shall be subject to the same duties, if any, to which lict and goods of the like kind are for the time being subject on importation at any customs port, and shall in other respects be dealt with as if they were im ported from a foreign port, unless it be shown to the satisfaction of the Customs collector that such goods are the produce or manufacture of any place from which they are entitled to be admitted duty free

28 Provisions and stores produced or manufactured in British India Country pro required for use on board of any vessel proceeding to any foreign port, may be shipped free of duty, whether of customs or excise, in such quantities as the shipped free Customs collector determines with reference to the tonnage of the vessel, the numbers of the crew and passangers, and the length of the voyage on which the vessel 19 about to depart

stores may be

Provided that no rum shall be so shipped on any vessel going on a voyage of less than thurty days' probable duration

29 On the importation into, or exportation from, any customs port of any goods, whether hable to duty or not, the owner of such goods shall, in his bill of entry or shipping bill, as the case may be, state the real value, quantity goods in bill and description of such goods to the best of his knowledge and belief, and shall of entry or subscribe a declaration of the truth of such statement at the foot of such bill

Owner to declare real value, et , of llia gatqqtd\*

In case of doubt, the Customs collector may require any such owner or Power to re any other person in possession of any invoice, broker's note, policy of insurance or other document, whereby the real value, quantity or description of voice etc any such goods can be ascertained, to produce the same, and to furnish any information relating to such value, quantity or description which it is in his newer to furnish And thereupon such person shall produce such document and furnish such information

Provided that, if the owner makes and subscribes a declaration before the Customs collector, to the effect that he is unable, from want of full information, to state the real value or contents of any case, package or parcel of goods, then the Customs collector shall permit him, previous to the entry thereof, (1) to open such case, package or parcel, and examine the contents in presence of an officer of Customs, or (2) to deposit such case, package or parcel in a public warehouse appointed under section 15 without warehousing the same, pending the production of such information

(Chapter F - Levy of, and Txemption from, Customs duties)

" Real value" defined

- 30 For the purposes of this Act the real value shall be deemd to be-
- (a) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of the duties payable on the importation thereof
  - (b) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without an, abatement or deduction except as aforesaid

of ad talo

31 Goods chargeable with duty upon the value thereof but for which a specific value is not fixed by law for the purpose of levying duties thereon, shall, without unnecessary delay, be examined by an officer of Customs it appears that the real value of such goods is correctly stated in the bill of entry or shipping bill, the goods shall be as essed in accordance therewith,

32 If it appears that such goods are properly chargeable with a higher rate or amount of duty than that to which they would be subject according to the value thereof as stated in the bill of entry or shipping bill, such officer may detain such goods

In every such case the detaining officer shall forthwith give notice in writing to the owner of the goods of their detention, and of the value thereof as estimated by him, and the Customs collector shall, within two clear working days after such detention, or within such reasonable period as may with the consent of the parties be arranged, determine either to deliver such goods on payment of duty charged according to the entry of such owner, or to retain the same for the use of Government

If the goods be retained for the use of Government, the Customs-collector shall cause the full amount stated in the bill as their real value to be paid to the owner in full satisfaction for such goods in the same manner as if they bul been transferred by ordinary sale, and shall, after due notice in the local official Gazette or some local newspaper, and without unnecessary delay, cause them to be put up to public auction in wholesale lots for cash on delivery

If the Customs collector deems the highest offer made at such sale to be madequate he may either adjourn the sale to some other day, to be notified as afore aid or buy in the goods, and without unnecessary delay dispose of them for the benefit of Government

If the proceeds arising from such sale exceed the sum paid to the owner. together with (in the case of goods imported) the duty to which the goods are hable and all charges incurred by Government in connection with them, a portion not exceeding one half of the overplus shall, at the discretion of the Chal Officer of Customs be payable to the officer who detected the undervaluation of the goods

I samination rem goods

Proce lure where such goods are under valued by owner

(Chapter I - Lern of, an I Eremption from, Customs duties)

Nothing in this section shall prevent the Chief Officer of Customs, when he has reason to believe that any such under valuation was solely the result of accident or error, from permitting the owner of the goods on his application for that purpose, to amend such entry on payment of such increased rate of duties on the excess of the amended over the original valuation, or on such other terms as the Chief Officer of Customs may determine

33 If on the first examination of any such goods under section 31, the thatement owner thereof states in writing that such goods are in consequence of damage sustained before delivery of the bill of entry, of value less than that stated goods in such bill the Customs collector on being satisfied of the fact, may allow abatement of duty accordingly

The reduced duty to be levied on such goods may be ascertained by either Reduced duty of the following methods at the option of the owner -

hor deter maned

- (a) the real value of such goods may be fixed on appraisement by an officer of Customs and the duty may be assessed on the value so fixed, or
- (b) the goods may, after due notice in the local official Gazette or some local newspaper, be sold by public auction at such time (within thirty days from the date of delivery of the bill of entry), and at such place as the Customs collector appoints, and the duty may be assessed on the gross amount realized by such sale, with out any abatement or deduction except (in the case of goods imported) of so much as represents the duties payable on the importation thereof
- 34 When any goods the value of which has been fixed by law for the pur- Deterioration pose of levying duties thereon, have, before delivery of the bill of entry, dete riorated to the extent of more than one tenth of their value, the duty on such goods shall, if the owner thereof so desires, be assessed ad valorem

value goods

The real value of such goods shall be ascertained as provided in section 33: and the duty shall be assessed thereon

35 No abatement of duty on account of damage shall be allowed on wine, No al ste spirit or beer, or on any other articles on which duties are levied on quantity ment when and not on value

on grantity 36 Except as provided in section 94, no amendment of a bill of entry or Restriction shipping bill relating to goods assessed for duty on the declared value quan- ment of bill tity or description thereof shall be allowed after such goods have been removed or entry or saipping from the custom house

37 The rate of duty and the tariff valuation (if any) applicable to any Alteration of goods imported shall be the rate and valuation in force on the date on which import-daty

bill.

(Chapter V -Levy of, and Exemption from, Customs duties)

or tariff valuation. the bill of entry thereof is delivered to the Customs collector under section  $86\,\mathrm{I}$ 

<sup>2</sup> Provided that, if such goods are warehoused under this Act, the rate and valuation (if any) applicable thereto shall be the rate and valuation in force on the date on which application is made to clear such goods from the warehouse for home consumption

Explanation — 4 bill of entry shall, for the purposes of this section, be deemed to be deinvered when it is first presented to the proper officer of Customs

Alteration of export dits or tariff valuation.

Payment of duties short levie i or erroneously ref inded 38 The rate of duty and tariff valuation (if any) applicable to any goods exported shall be the rate and valuation in force when a shipping bill of such goods is delivered under section 137.

39 When customs duties or charges have been short levied through madvertence error, collusion or misconstruction on the part of the officers of Customs or through mis statement as to real value, quantity or description on the part of the owner.

or when any such duty or charge after having been levied, has been, owing to any such cause erroneously refunded,

the person chargeable with the duty or charge so short levied, or to whom such refund has erroneously been made, shall pay the deficiency or repay the amount paid to him in excess, on demand being made within three months from the date of the first assessment or making of the refund,

and the Customs collector may refuse to pass any goods belonging to such person until the said deficiency or excess be paid or repaid

No refund of charges erro neously levied or paid unless claimed within three months. 40 No customs duties or charges which have been paid, and of which repayment wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be returned, unless such claim is made within three months from the date of such payment

Power to give credit for and keep account current of duties and charges. 41 The Customs collector may, if he thinks fit, instead of requiring parment of customs duties and charges due from any mercantile firm or public body at the time such duties and charges are payable under this Act, keep with such firm or body an account current of such duties and charges. Such account shall be settled at intervals not exceeding one month, and such firm or body shall make a deposit or furnish security sufficient in the opinion of

<sup>1</sup> Ser the Petroleum (Customs Duty) Act 1889 (II of 1888) s. 2, General Acts, Vol. IV, which is as follows --

<sup>&</sup>quot;2. The rate of duty applicable to petroleum of which the bill of entry is deletered, which the meaning of section 37 of the Sea Customs Act 1878 to the Customs collector under second and the second duty specified in the second year.

## (Chapter VI -- Drawback)

the Customs collector to cover the amount which may at any time be due from them in respect of such duties and charges

#### CHAPTER VI

## DRAWBACK

42 When any goods, capable of being easily identified, which have been Drawback imported by sea into any customs port from any foreign port, and upon allowable which duties of customs have been paid on importation, are re exported by sea from such customs port to any foreign port, or as provisions or stores for use on board a ship proceeding to a foreign port, seven eighths of such duties shall, except as otherwise hereinafter provided, be repaid as drawback

Provided that, in every case, the goods be identified to the satisfaction of Conditions the Customs collector at such customs port, and that the re export be made for grant of within two years from the date of importation, as shown by the records of the custom house, or within such extended term as the Chief Customs authority, on sufficient cause being shown, in any case determines

43 When any goods having been charged with import duty at one cus Drawback on toms port and thence exported to another, are re exported by sea as afore. goods ex said, drawback shall be allowed on such goods as if they had been so re export ed from the former port

ported to customs port and thence to foreign

Provided that, in every such case, the goods be identified to the satisfac Proviso tion of the officer in charge of the custom house at the port of final exportation, and that such final exportation be made within three years from the date on which they were first imported into British India

44 A drawback of the whole of the customs duties shall be allowed on Drawback of wine and spirit intended for the consumption of any officer of Her Majesty's duties on Navy, on board of any of Her Majesty's ships in actual service, unless such spirit allowed wine and spirit have been warehoused without payment of duty on the first for officers of entry thereof

The quantity of wine and spirit on which drawback may be so allowed in any one year for the use of such officers shall not exceed the quantities berein after allowed for each such officer respectively, that is to say-

|                                  |     |        |       |        |    | Callons |
|----------------------------------|-----|--------|-------|--------|----|---------|
| For every Admiral                |     |        |       |        |    | 1,260   |
| Vice-Admiral                     |     |        |       |        |    | 1000    |
| Rear Admiral .                   |     |        |       |        |    | 540     |
| Captain of 1st and 2nd rate      |     |        |       |        |    | 630     |
| Captain of 3rd, 4th and 5th rate |     |        |       |        |    | 420     |
| Captain of an inferior rate .    |     |        |       |        |    | 210     |
| Lieutenant or other Commanding   | 0.5 | cer. 3 | Iarme | office |    |         |
| Master, Purser of Surgeon .      | •   | •      |       |        | ٠. | 105     |

## (Chapter VI - Drauback)

Persons
entering such
wine or
spirit for
drawback to
declare name
and rank of
officer claim
ing same

45 Every person clearing and claiming drawback for wine or spirit, as provided in section 44, shall state in the shipping bill the name of the officer for whose use such wine or spirit is intended, and of the ship in which he serves as well as the place and date of the last supply for which drawback was allowed

All such wine and spirit shall be delivered into the charge of the proper officers of Customs at the port of shipment, to be shipped under their care; and when the officer commanding the ship has certified the receipt of such wine and spirit into his charge, and any such officer of Customs has certified the shipment, the drawback shall be paid to the person entitled to receive the same

Transfer of wine or spirit from one naval officer to another

46 The Customs collector may permit the transfer of any such wine or t spirit from one naval officer to another naval officer on board of the same, or of any other such vessel, as part of his authorized quantity.

or may permit the transhipment of any such wine or spirit from one vessel to another for the use of the same naval officer,

or the re landing and warehousing of any such wine or spirit for future re supment

The Customs collector may also receive back the duties for any such wine or spirit, and allow the same to be cleared for home consumption

Provisions and stores for Her Majesty s Navy 47 Provisions and stores for the use of Her Majest; 's Navy or of any officer thereof which are subject to duty may in life manner, be transferred, transhipped or re landed and warehoused, free of duty

and where duties have been paid on any such provisions or stores required for shipment, drawback of such duties whether of customs or excise, shall be allowed on receipt of an application in writing from the officer commanding the ship for which they are intended, or from some other officer duly author ized to make such application

Indian Marine and Marine survey 48 The provisions of sections 4', 45, 46 and 47 as to officers of Her Majesty's Navy apply also to officers of Her Majesty's Indian Marine and Marine Survey on board of any of the ships of such Marine or Survey proceeding to any port out of India, and the rules prescribed by section 47 as to provisions and stores for the use of Her Majesty's Navy apply also to provisions and stores for the use of such Marine or Survey

Power to declare wh t goods are identifiable, 49 The Governor General in Council may from time to time, by notification in the Gazette of India,—

(a)¹ declare what goods shall, for the purpose of this Chapter, be deemed to be capable of being easily identified, and

<sup>1</sup> For notification issued under this clause, see Gazette of India, 1881, Pt I p 227

633

(Chapter VI - Drauback Chapter VII - Arrival and Departure of Vessels.)

(b)1 probability the payment of drawback upon the re exportation of goods and to

50 Notwithstanding anything hereinbefore contained, no drawback shall When no

drawback in case of speci fied foreign drawback allowed

prohibit

he allowed-(a) upon goods not included in the export manifest, or

to any specified foreign port in India

- (b) where the goods to be exported are of less value than the amount of drawback claimed or
- (c) where the claim is for drawback amounting, in respect of any single shipment to less than five rupees and the Customs collector thinks fit to reject it or
- (d) on salt, salted fish or opium

thereon

51 No drawback shall be allowed unless the claim to receive such draw back he made and established at the time of re export

Time to claım draw hark ment made

No such payment of drawback shall be made until the vessel carrying the When may goods has put out to sea, or unless payment be demanded within six months from the date of entry for shipment

52 Every person or his duly authorized agent, claiming drawback on any Declaration goods duly exported shall make and subscribe a declaration that such goods claiming have been actually exported and have not been relanded and are not intend. drawback ed to be relanded at any customs port, and that such person was at the time of entry outwards and shipment and continues to be, entitled to drawbaca

## CHAPTER VII

## ARRIVAL AND DEPARTURE OF VESSELS

Arrival and Entry of Vessels inwards

2 53 The Local Government may, by notification in the local official Power to fx Gazette, fix a place in any river or port, beyond which no vessel arriving shall road who pass until a manifest has been delivered to the pilot, officer of Customs or inward other person duly authorized to receive the same

vond whi h boun i resels are not to proceed until manifest

delivered

If, in any river or port wherein a place has been fixed by the Local Govern-Delivery of ment under this section, the master of any vessel arriving remains outside or manifest when ressel

<sup>1</sup> For orders under this clause in conjunction with se. 111 and 134 ace Cazette of India, 1879. IPt I, p 344 361, 1895 Pt. I, p. 919 2 For rules as to vessels entering the outer harbour of Aden see Bom. P. and O .

anchors be low place so fixed. below the place so fixed, such master shall, nevertheless, within twenty four hours after the vessel anchors, deliver a manifest to the pilot, officer of Cus toms or other person authorized to receive the same

Delivery of manifest where no place has been so fixed Signature

and contents

54 If any vessel arrives at any customs port in which a place has not been so fixed the master of such vessel shall, within twenty four hours after such vessel has anchored within the limits of the port, deliver a manifest to the pilot, officer of Customs or other person authorized to receive the same

of manifest

55 Every manifest shall be signed by the master, and shall specify all goods imported in such vessel, showing separately all goods (if any) intended to be landed, transhipped or taken on to another port and all ship's stores intended for consumption in port or on the homeward voyage and shall con tain such further particulars and be made out in such form <sup>1</sup> as the Cuef Customs authority may from time to time direct

Amendment of errors in manifest

The Customs collector shall permit the master to amend any obvious error in the manifest, or to supply any omission which in the opinion of such Collector results from accident or inadvertence, by furnishing an amended or supplementary manifest,

and may, if he thinks fit, levy thereon such fee as the Chief Customs-authority from time to time directs

Except as herein provided, no import manifest shall be amended.

Duty of person re ceiving manifest 56 The person receiving a manifest under section 59 or 54 shall countersign the same and erter thereon such particulars as the Chief Customs authority from time to time directs in this behalf

Bulk not to be broken until mani fest etc. delivered. and vessel entered in wards. Master if required to deliver bill of lading ete to Cus toms-collec tor, and answer

57 No vessel arriving in any customs port shall be allowed to break bulk until a manifest has been delivered as hereinbefere provided, nor until a copy of such manifest, together with an application for entry of such vessel inwards, has been presented by the master to the Customs collector, and an order has been given thereon for such entry

58 The master shall, if required so to do by the Customs collector at the time of presenting such application, deliver to the Customs collector the bill of lading or a copy thereof for every part of the cargo laden on board, and any port clearance, cocket or other paper granted in respect of such vessel at the place from which she is stated to have come, and shall answer all such questions relating to the vessel, cargo, crew and voyage as are put to him by such officer

The Customs collector may, if any requisition or question made or put by him under this section is not complied with or answered, refuse to grant such application.

Special pass

questions

59 Notwithstanding anything contained in section 57, the Customs col-

<sup>3</sup> For form prescribed in Madras see Mad R and O and in Burms, see Bur R M

lector may grant, prior to receipt of the manifest, and to the entry inwards of for breaking the vessel, a special pass1 permitting bulk to be broken

The granting of such pass shall be subject to such rules as may from time to time be made by the Chief Customs authority.

60. Notwithstanding anything contained in section 53, 54, 57 or 58, the Manifest, Customs collector may accept from the ship's agent, in lieu of the master, delivered by delivery of the manifest or of any other document required by those sections ship's agent. I to be delivered by the master

# Entry outwards, Port clearance and Departure of Vessels 2

61 No vessel shall take on board any part of her export cargo, until a writ Order for ten application for entry of such vessel outwards, subscribed by the master of such vessel, has been made to the Custom collector, or before an order has

entry outwards to be obtained before export cargo is ship-

been given thereon by such officer for such entry Every application made under this section shall specify the name, tonnage red and national character of the vessel, the name of the master, and the name of

every place for which cargo is to be shipped 62 No vessel, whether laden or in ballast, shall depart from any customsport until a post clearance has been granted by the Customs collector or other

No vessel to depart with. out port-

officer duly authorized to grant the same And no pilot shall talle charge of any vessel proceeding to sea, unless the master of such vessel produces a port clearance

clearance. No pilot to take charge of vessel proceeding to

63 Every application for port-clearance shall be made by the master at least twenty four hours before the intended departure of the vessel

Application for port-

The master shall at the time of applying for port clearance -

clearance Master on applying for port-clearance to deli

sea without production of port-clear.

(a) deliver to the Customs collector a manifest in duplicate in such form<sup>3</sup> as may from time to time be prescribed by the Chief Customs authority signed by such master specifying all goods to be exported in the vessel and showing separately all goods and stores

ver docu ments and answer questions.

<sup>1</sup> For rules in force in Bombay and Karachi as to special passes for breaking bulk, see Bom R and O

entered in the import manifest and not landed or consumed on board or transhipped

- (b) deliver to the Customs collector such shipping bills or other docu ments as such Customs collector acting under the general instruc tions of such Chief Customs authority requires and
- (c) ans ver to the proper officer of Customs such questions touching the departure and destinution of the vessel as are demanded of him

The provisions of section 55 relating to the amendment of import manifests shall mutatis mitandis apply also to export manifests delivered under this section

Power to refuse port clearance

- 164 The Customs collector may refuse port clearance to any vessel until—
- (a) the provisions of section 63 are complied with
- (b) all port dues and other charges and penalties due by such vessel or by the owner or master thereof and all duties payable in respect of any goods shipped therein have been dul paid or their pay ment secured by such guarantee or by deposit at such rate as such Customs collector directs
  - (c) the ship s agent (if any) delivers to the Customs collector a declara tion in writing to the effect that he will be hable for any penalty imposed under section 167 No 17, and furnishes security for the discharge of the same.
  - (d) the ship's agent (if any) delivers to the Customs collector a declara tion in writing to the effect that such agent is answerable for the discharge of all claims for damage or short delivery which may be. established by the owner of any goods comprised in the import cargo in respect of such goods

A ship's agent delivering a declaration under clause (c) of this section shall be liable to all penalties which might be imposed on the master under section 167, No 17 and a ship's agent delivering a declaration under clause (d) of this section shall be bound to discharge all claims referred to in such declaration

2 65 When the Customs collector is satisfied that the provisions of section

63 and if necessary of clauses (b) and (c) and (d) of section 64, have been com

Grant of port-clear ânce

plied with, he shall grant a port clearance to the master and shall return at the same time to such master one copy of the manifest duly countersigned by the proper officer of Customs 66 Notwithstanding anything contained in sections 64 and 65 the Cus

Grant of port clear ance on

toms collector may (subject to such rules as the Chief Customs authority may

<sup>1</sup> For form prescribed in Burma under this section see Burma Gazette 1903 Pt. IV p 66 in Madras see Mad R and O

<sup>2</sup> For prescribed form issued under this section in Madras see Mad. R. and O 3 For such rules see Bur R M. in Madras see Mad. R and O

(Chapter VIII -General Proxisions affecting Vessels in Port )

from time to time prescribe) grant a port clearance to the master when the security of ship's agent furnishes such security as the Customs collector deems sufficient ship s agent. for duly delivering within five days from the date of such grant, the manifest and other documents specified in section 63

## CHAPTER VIII

### GLAPPAL PROVISIONS AFFECTING VESSELS IN PORT

67 The Customs collector at any customs port may at any time depute at his discretion one or more officers of Customs to board any vessel in or army ing at such port

Power to depute Customs officer to board ships

Every officer of Customs so sent shall remain on board of such vessel by Duty of such day and by night unless or until the Customs collector otherwise orders officer

68 Whenever an officer of Customs is so deputed on board of any vessel, the master of such vessel shall be bound to receive on board such officer, and one servant of such officer and to provide such officer and servant with suit able shelter and accommodation and likewise with a due allowance of fresh tion of officer water and with the means of cooking on board

Officer and servant to be received Accommoda

69 Every officer of Customs so deputed shall have free access to every part Officers of of the vessel, and may fasten down any hatchway or entrance to the hold and mark any goods before landing and lock up seal, mark or otherwise secure any goods on board of such vessel

and servant Customs to have free access to every part of shin and

If any box place or closed receptacle in any such vessel be locked and the Poner to her be withheld such officer shall report the same to the Customs collector, search and who may thereupon issue to the officer on board or to any other officer under opening of his authority a written order to search

may seal and secure goods auti orize

On production of such order the officer bearing the same may require that any such box place or closed receptacle be opened in his presence, and if it he not opened upon his requisition he may break open the same

70 Unless with the written permission of the Customs collector or in ac Goods not cordance with a general permission granted under section 74 no goods other to be shipped, than passengers' baggage or ballast urgently required to be shipped for the or water vessel's safety, shall be shipped or water borne to be shipped or discharged bemeencept from any vessel in any customs port except in the presence of an officer of of officer Customs

discharged

71 When an officer of Customs is deputed under section 67 to remain on Period board a vessel the tonnage of which does not exceed six hundred tons, a period discharge and

entered in the import manifest and not landed or consumed on board or transhipped

- (b) deliver to the Customs collector such shipping bills or other docu n ents as such Customs collector, acting under the general instructions of such Chief Customs authority, requires, and
- (c) ans ver to the proper officer of Customs such questions touching the departure and destin ition of the vessel as are demanded of him

The provisions of section 55 relating to the amendment of import manifests shall mutatis mutantic apply also to export manifests delivered under this section.

Power to refuse port clearance 164 The Customs collector may refuse port clearance to any vessel until-

- (a) the provisions of section 63 are complied with
- (b) all port dues and other charges and penalties due by such vessel, or by the owner or master thereof and all duties payable in respect of any goods shipped therein have been duly paid or their pay ment secured by such guarantee or by deposit at such rate as such Custon's collector directs,
- (c) the ship's agent (if any) delivers to the Customs collector a declaration in writing to the effect that he will be hable for any penalty imposed under section 167, No 17, and furnishes security for the discharge of the same.
- (d) the ship's agent (if any) delivers to the Customs collector a declaration in writing to the effect that such agent is answerable for the discharge of all clums for damage or short delivery which may be established by the owner of thy goods comprised in the import cargo in respect of such goods

A ship's agent delivering a declaration under clause (c) of this section shall be hable to all penalties which might be imposed on the master under section 167, No 17, and a ship's agent delivering a declaration under clause (d) of this section shall be bound to discharge all claims referred to in such declaration

Grant of port-clear ance. <sup>2</sup> 65 When the Customs collector is satisfied that the provisions of section 63, and if necessary of clauses (b) and (c) and (d) of section 64, have been complied with, he shall grant a port-clearance to the master, and shall return at the same time to such master one copy of the manifest duly countersigned by the proper officer of Customs
66 Notwithstanding anything contained in sections 64 and 65, the Cus

Grant of port-clear ance on

toms collector may (subject to such rules as the Chief Customs authority may

<sup>1</sup> For form prescribed in Burma under this section see Burma Gazette 1903 Pt IV p 66. in Madras see Mad. R. and O

<sup>2</sup> For prescribed form issued under this section in Madras see Mad. R and O 3 For such rules see Bur R M. in Madras see Mad R and O

1878

(Chapter \ III -General Provision affecting Vessels in Port )

from time to time prescr be) grant a port clearance to the master when the security of slip s agent furnishes such security as the Customs collector deems sufficient for duly delivering within five days from the date of such grant, the manifest and other documents specified in section 63

# CHAPTER VIII

## GENERAL PROVISIONS AFFECTING VESSELS IN PORT

67 The Customs collector at any customs port may at any time depute Power to at his discretion one or more officers of Customs to board any vessel in or arriv ing at such port

depute Customs officer to

Every officer of Customs so sent shall remain on board of such vessel by Duty of such day and by night unless or until the Customs collector otherwise orders

board ships officer

68 Whenever an officer of Customs is so deputed on board of any vessel, Officer and the master of such vessel shall be bound to receive on board such officer, and one servant of such officer and to provide such officer and servant with suit able shelter and accommodation and likewise with a due allowance of fresh water and with the means of cooking on board

servant to be received Accommoda tion of officer

69 Every officer of Customs so deputed shall have free access to every part of the vessel and may fasten down any hatchway or entrance to the hold and mark any goods before landing and lock up seal mark or otherwise secure access to any goods on board of such vessel

and servant. Officers of Customs to have free every part of ship and

If any box place or closed receptacle in any such vessel be locked and the Power to hey be withheld such officer shall report the same to the Customs collector, severel and who may thereupon issue to the officer on board or to any other officer under opening of locks. his authority a written order to search

may scal and secure goods

On production of such order the officer bearing the same may require that any such box place or closed receptacle be opened in his presence, and, if it be not opened upon his requisition he may break open the same

70 Unless with the written permission of the Customs collector or in ac cordance with a general permission granted under section 74 no goods other to be shaped. than passengers' baggage or ballast urgently required to be shipped for the or water vessel's safety shall be shipped or water borne to be shipped or discharged borne except from any ressel in any customs port except in the presence of an officer of of officer Customs

71 When an officer of Customs is deputed under section 67 to remain on Period board a vessel the tonnage of which does not exceed six hundred tons a Jeriod dicharge and

## (Chapter VIII -General Provisions affecting Vessels in Port )

shipment of cargo of thirty working days, reckoned from the date on which he boards such vessel or such additional period as the Customs collector directs, shall be allowed for the discharge of import-cargo and the shipment of export-cargo on board of such vessel

One additional day shall, in like manner, be allowed for every fifty tons in excess of six hundred

No charge shall be made for the services of a single officer of Customs for such allowed number of working days, or for the services of several such officers (if available) for respective periods not exceeding in the aggregate such allowed number of working days

Consequence of exceeding same If the period occupied in the discharge and shipment of cargo be in excess of thirty working days, together with the additional period (if any) allowed under this section, the vessel shall be charged with the expense of the officer of Customs at a rate not exceeding five rupees per diem (Sundays and holidays excepted) for such excess period

Allowance for period during which vessel is laid up In calculating any period allowed, or any charge made under this section, the period (if any) during which a vessel, after the completion of the discharge of import cargo, and before commencing the shipment of export cargo, is laid up by the withdrawal of the officer of Customs, upon application from the master, shall be deducted

Goods not to be landed, etc, on Sundays or holidays, without permission, nor except within fixed

- 1.72 Except with the written permission of the Customs collector, no goods, other than passengers' baggage, shall in any customs port be discharged from any vessel, or be shipped or water borne to be shipped,—
  - (a) on any Sunday or on any holiday or day on which the discharge or shipping of cargo, as the case may be, is prohibited by the Chief Customs authority.
  - (b) on any day, except between such hours as such authority from time to time appoints by notification<sup>2</sup> in the official Gazette

to time appoints by notification in the official Gazette

73 No goods shall in any customs-port be landed at any place other than

Goods not to be shipped, etc. except at wharves

hours

73 No goods shall in any customs-port be landed at any place other than a wharf or other place3 duly appointed for that purpose, and

unless with the written permission of the Customs collector, or when a general permission has been granted under section 74, no goods shall in any customs port be shipped or water borne to be shipped from any place other than a wharf or other place duly appointed for that purpose

Power to exempt from sections 70 and 73 74 Notwithstanding anything contained in section 70 or 73, the Chief Customs authority may, by notification in the local official Gazette give general permission for goods to be shipped or water borne to be shipped in any

<sup>1</sup> For rules issued under this section in Burma see Bur R M in Madras see Mad. R and O 2 For instance of such notification see Bon R. and O

<sup>3</sup> For places appointed for the landing of goods in Burma under this section, see Bur P M

(Chapter VIII .- General Provisions affecting Vessels in Port )

customs-port from all or any places not duly appointed as wharves, and without the presence or authority of an officer of Customs

75 The Chief Customs authority may from time to time make 2 rules for Power to the landing and shipping of passengers' baggage and the passing of the same regarding through the Custom-house and for the landing, shipping and clearing of parcels forwarded by Her Majesty's or other mails, or by other regular packets and passenger vessels

baggage and

When any baggage or parcels is or are made over to an officer of Customs Landing fees for the purpose of being landed, a fee of such amount as the Local Govern. ment from time to time directs shall be chargeable thereon, as compensation for the expense and trouble incurred in landing and depositing the same in the custom house

76 When any goods are water-borne for the purpose of being landed from Boat note any vessel and warehoused or cleared for home-consumption, or of being shipped for exportation on board of any vessel, there shall be sent, with each boatload or other separate despatch3 a boat-note specifying the number of packages so sent and the marks and numbers or other description thereof

Each boat-note for goods to be landed shall be signed by an officer of the vessel, and likewise by the officer of Customs on board, if any such officer be on board, and shall be delivered on arrival to any officer of Customs authorized to receive the same

Each boat note for goods to be shipped shall be signed by the proper officer of Customs, and if an officer of Customs is on board of the vessel on which such goods are to be shipped, shall be delivered to such officer If no such officer be on board, every such boat note shall be delivered to the master of the vessel, or to an officer of the vessel appointed by him to receive it

The officer of Customs who receives any boat-note of goods landed, and the officer of the Customs, master or other officer, as the case may be, who receives any boat-note of goods shipped shall sign the same and note thereon such particulars as the Chief Customs-authority may from time to time direct

The Local Government may from time to time, by notification in the local official Gazette, suspend the operation of this section in any customs-port or rart thereof

<sup>1</sup> For order in force under 8 74 m-

<sup>(1)</sup> Bengal, see Ben R and O

<sup>(2)</sup> Bombay as to stone bullast, see Bombay Government Gazette 1896, Pt. I. p. 219, (3) Burma as to use of private jetties in certain ports, see Pur P M.

<sup>2</sup> For such rules in force in-

<sup>(1)</sup> Bengal see Ben R. and O . Calcutta Gazette, 1907, Pt I, p. 2188 . 7 d. 1908 Pt I.

<sup>(2)</sup> Bombay and Karachi, see Bom. R. and O , (3) Birma, see Bur R M, and Burma Gazette, 1904 p. 193. (4) Madras, see Fort St George Gazette, 1908 Pt. II, p. 551

<sup>3</sup> The operation of this section in the port of Madras so far as it relates to export boat notes has been suspended, see Fort St. George Gazette, 1883, Pt. I, p. 830.

(Chapter VIII —General Provisions affecting Vessels in Port Chapter IX — Of Disclarge of Cargo and Intry inwards of Goods)

77 All goods water borne for the purpose of being landed or shipped shall be landed or shipped without any unnecessary delay

- 78 Except in cases of imminent danger no goods discharged into or load ed in any boat for the purpose of being landed or shipped shall be transhipped into any other boat without the permission of an officer of Customs
- 79 The Local Covernment may declare with regard to any customs port by notification in the local official Gazette that after a date therein specified no boat not duly licensed and registered shall be allowed to ply as a cargo boat for the landing and shipping of merchandise within the limits of such port

Ir any port with regard to which such notification has been issued the Chief Officer of Customs or other officer wil out the Local Government appoint in this behalf may subject to such 'Irules and on payment of such fees as the I ocal Government from time to time prescribes by notification in the local official Cazotte, issue licenses for and register cargo boats 'ach officer may also subject to rules so prescribed cancel any license so issued

80 The Custom's collector may whenever he think is fit require that goods stowed in bulk and brought by sea or intended for exportation shall be weigh el or measured on board ship before landing or after shipment and may levy duty according to the result of such weighing it measurement.

### CHAPTER IX

### OF DISCHARGE OF CARGO AND FATRY INWARDS OF GOODS

- 81 When an order for entry inwards of any vessel which has arrived in any Customs port or a special pass permitting such vessel to break bulk has been given the discharge of the cargo of such vessel may be proceeded with
- 82 Except as otherwise provided in this act no goods shall be allowed to leav any such vessel unless they are entered in the original mainfest of such ve sel or in an air ended or supplementary manifest received under sec
- 283 If the owner of any goods (except such as have been shown in the import manifest as not to be landed) does not land such goods within such period

Goods
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Is e of licenses and registra tion of cargo boats

unlicensed

Power to req ire good to be veighed or n easured on board before landing or after ship ment

Di clarge of cargo may commence on receipt of due permiss on Goods not o leave ship unless

entered in n anifest Procedure in resp et el goods not

Pt I p 151" and il d

<sup>19,)</sup> Pt I p 837

For not feation 1 sued an ler the section in Madras see Port St. George Gazette 1883. Pt. I p 830 in Boulby see Bom R and O.

(Clapter IX -Of Disclarge of Cargo and Entry and ards of Goods)

as is specified in the bill of lading of such goods or if no per olis so spec fed landed within such number of working days not exceeding fiftee; after the entry of a lowed the vessel importing the same as the I ocal Government from time to time appoints by notification in the official Gazette or

if the cargo of any vessel with the exception of only a small quantity of goods has been d scharged previously to the expiration of the period so s, cor fied or appointed as the case may be-

the master of such vessel or on his application the proper officer of Cus toms may then carry such goods to the custom house there to remain for

The Customs collector shall thereupon take charge of and grant receipts for such goods

and if notice in writing has been given by the master that the goods are to remain subject to a lien for freight or mage general average or other charg es of a stated amount the Customs collector shall hold such good until he receives notice in writing that the said charges are paid

84 At any time after the arrival of any vessel the Customs collector may with the consent of the master of such vessel cause any small package or par cel of goods to be carned to the custom house there to remain for entry in clarge of the officers of Customs during the remainder of the working days

Ta alu f parcele

If any package or parcel so carried to the custom louse remains unclaim ed on the expiration of the number of worlang days so allowed for its landing or at the time of the clearance outwards of the vessel from which it was landed the master may give such notice as is provided in section as and the officer in charge of the custom house shall thereupon hold such package or parcel as provided in that section

allowed under this Act for the landing of such package or parcel

Not ce re gard ng un cl med packages

85 Notwithstanding anything contained in sections 83 and 81 the Cus toms collector in any customs port to wl ch the I ocal Government by not ficet on in the local official Gazette declares this section to bel applicable may declarge. permit the master of any vessel immedutely on receipt of an order under section 57 or a special pass under section 59 to discharge the cargo of such vessel or any portion thereof into the custody of the slup a agents if willing to receive the same for the purpose of landing the same forthwith-

Pow rto

- (a) at the custom I ouse or any spec fed land ng place or wharf or
- (b) at any landing place or wharf belonging to any Port Comm ssioners Port Trust or other public body or company

1 "

have ship is ago it so receiving such eargo or portion whill be bound to discharge all thin is fir during or short delivers which have be established in respect of the same to the own in thereoff in dishable, a fitted to recover from such owner has all right first varieties during the results of the country and but not five count, so on or the lake where a warper for the latting of scheenings or portion has been previously as a steel by the owners of t = b, we go then the interpretable.

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(Chapter X -Of Clearance of Goods for Home Consumption Chapter XI -Warehousing)

If any goods of which the Customs collector has taken charge under sec tion 83 81 or 85 be of a per shable nature the Customs-collector may at any time direct the sale thereof and shall apply the proceeds in like manner

Power to direct sale of perishable

Provided that where any goods hable to be sold under this section are Proviso arms amminition or military stores they may be sold or otherwise disposed of at such place (whethe with n or without British India) and in such manner as the Local Government may from time to time direct

Provided also that nothing in this section shall authorize the removal for home consumption of any dutiable goods without payment of duties of cus toms thereon

#### CHAPTER A

#### OF CLEARANCE OF GOODS FOR HOME CONSUMPTION

89 When the owner of any goods entered for home consumption and Clearance for (if such goods be liable to duty) assessed under section 87 has paid the import home con duty (if any) assessed on such goods and any charges payable under this Act in respect of the same the Customs officer may make an order clearing the same and such order shall be sufficient authority for the removal of such goods by the owner

sumntion

### CHAPTER XI

#### WAREHOUSING

## Of the Ad nission of Goods into a Warehouse

90 When any dutiable goods have been entered for warehousing and as sessed under section 87 the owner of such goods may apply for leave to deposit the same in any warehouse appointed or licensed under this Act

At il cation to warehouse

91 Every such application shall be in writing signed by the applicant and Form of shall be in such form as is from time to time prescribed by the Chief Customs authority 1

appi attom.

92 When any such application has been made in respect of any goods the Warehousing owner of the goods to which it relates shall execute a bond binding himself. in a penalty of twice the amount of duty assessed under section 87 on such goods -

(a) to observe all rules prescribed by this Act in respect of such goods.

<sup>1</sup> For bill of entry for bond prescribed for Burms see Burms Cazette 1906 Pt IV 88 for Madras see Fort St George Cazette 1883 Pt I p 83

## (Charter XI -Warehousing)

- (b) fill up any casks of wine, spirit or beer from any casks of the same secuted in the same warehouse: (c) mix any wines or spirit of the same sort secured in the same warehouse.
- erasing from the cask all import brands, unless the whole of the wine or spirit so mixed be of the same brand .
- (d) bottle-off wine or spirit from any casks.
- (e) take such samples of goods as may be allowed by the Customs collector with or without entry for home consumption, and with or without payment (f duty, except such as may eventually become navable on a deficiency of the original quantity

After any such goods have been so separated and repacked in proper or approved packages the Customs-collector may, at the request of the owner of such goods cause or permit any refuse, damaged or surplus goods remaining after such separation or repacking (ar, at the like request, any goods which may not be worth the duty) to be destroyed, and may remit the duty payable thereon.

101 If goods be lodged in a public watchouse, the owner shall pay monthly, on receiving a bill or written demand for the same from the Customs-collector or other officer deputed by him in that behalf, rent and warehouse-dues at such rates as the Chief Customs authority or such officer of Customs as such authority from time to time appoints in this behalf may fix !

A table of the rates of rent and warehouse dues so fixed shall be placed in a conspicuous part of such warehouse

If any bill for rent or warehouse dues presented under this section is not discharged within ten days from the date of presentation, the Customs col lector may, in the discharge of such demand (any transfer or assignment of the goods notwithstanding) cause to be sold by public auction, after due notice in the local official Gazette, such sufficient portion of the goods as he may select

Out of the proceeds of such sale, the Customs collector shall first satisfy the demand for the discharge of which the sale was ordered and shall then pay over the surplus (if any) to the owner of the goods

Provided that the application for such surplus be made within one year from the date of the sale of the goods or that sufficient cause be shown for not making it within such period

102 No warehoused goods shall be taken out of any warehouse, except on clearance for home consumption or shipment, or for removal to another warehouse, or as otherwise provided by this Act

103 Any goods warehoused may be left in the warehouse, in which they

Payment of

warehouse

rent and

Goo is not to be taken out of warehouse. provided by íh a Act. ferred for

<sup>!</sup> For fixing rent in certain places in Burmi, ere Bur R. M., for Karachi, etc Bom R. and O

(Chapter X -Of Clearance of Goods for Home Consumption Chapter XI -Warehousing \

If any goods of which the Customs collector has taken charge under sec- Power to tion 83 84 or 85 he of a perishable nature, the Customs-collector may at any time direct the sale thereof and shall apply the proceeds in like manner

of perishable goods

Provided that where any goods hable to be sold under this section are Proviso arms amminition or military stores they may be sold or otherwise disposed of at such place (with within or vithout British India), and in such manner as the Local Government may from time to time direct

Provided also that nothing in this section shall authorize the removal for home consumption of any dutable goods without payment of duties of cus toms thereon

### CHAPTER X

### OF CLEARANCE OF GOODS FOR HOME CONSUMPTION

89 When the owner of any goods entered for home consumption and Clearance for (if such goods be liable to duty) assessed under section 87 has paid the importduty (if any) assessed on such goods and any charges payable under this Act in respect of the same, the Customs officer may make an order clearing the same and such order shall be sufficient authority for the removal of such goods by the owner

home con sumption

#### CHAPTER XI

#### WAREHOUSING

### Of the Admission of Goods into a Warehouse

90 When any dutiable goods have been entered for warehousing and as sessed under section 87, the owner of such goods may apply for leave to deposit the same in any warehouse appointed or licensed under this Act

Application

- 91 Every such application shall be in writing signed by the applicant, and Form of shall be in such form as is from time to time prescribed by the Chief Customs authority 1
  - apple ation,
- 92 When any such application has been made in respect of any goods the owner of the goods to which it relates shall execute a bond binding himself. in a penalty of twice the amount of duty assessed under section 87 on such goods -
  - Warehousing
  - (a) to observe all rules prescribed by this Act in respect of such goods .
- 2 For bill of entry for bond preser bed for Burms eee Burms Cazette 1900 Pt 15 588 for Madras eee Fort St George Cazette 1883 Pt I p 83"

## (Chapter XI -- Warehousing)

- (b) to pay, on demand, all duties, rent and charges claimable on account of such goods under this Act together with interest on the same from the date of demand, at such ratel not exceeding ax per cent per annum as is for the time being fixed by the Chief Customsauthority, and
- (c) to discharge all penalties incurred for violation of the provisions of this Act in respect of such goods

Form of bond

warehouse

Every such bond shall be in the form marked A hereto annexed, or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Chief Customs authority.

and shall relate to the cargo or portion of the cargo of one vessel only

Forwarding 93 When the provisions of sections 91 and 92 have been complied with in of goods to respect of any goods, such goods shall be forwarded in charge of an officer of Customs to the warehouse in which they are to be deposited

A pass shall be sent with the goods specifying the name of the importing vessel and of the bonder the marks numbers and contents of each package and the warehouse or place in the warehouse wherein they are to be depo sited

Pecent of goods at wareho se

94 On receipt of the goods the pass shall be examined by the warehouse Leeper, and shall be returned to the Customs collector

No package, butt cask or hogshead shall be admitted into any warehouse unless it bear the marks and numbers specified in, and otherwise correspond with, the pass for its admission

If the goods he found to correspond with the pass, the warehouse keeper shall certify to that effect on the pass and the warehousing of such goods shall be deemed to have been completed

If the goods do not so correspond the fact shall be reported by the warehouse keeper for the orders of the Customs collector and the goods shall either be returned to the custom house in charge of an officer of Customs or kept in deposit pending such orders as the warehouse keeper deems most convenient

If the quantity or value of any goods has been erroneously stated in the bill of entry the error may be rectified at any time before the warehousing of

the goods is completed, and not subsequently 95 Except as provided in section 100, all goods shall be warehoused in

the packages, butts casks or hogsheads in which they have been imported 96 Whenever any goods are lodged in a public warehouse or a liceused private warehouse the warehouse keeper, or, in the case of the Bengal Bonded Warehouse Association, the Secretary of the said Association shall deliver a

warrant signed by him as such to the person lodging the goods Such warrant shall be in the form B hereto annexed, and shall be transferable by endorsement, and the endorsee shall be entitled to receive the goods

Goods how warehoused

Warrant to be given when goods are ware housed

Form of warnint

CUZ OMS.

## (Chapter XI -Warehousing)

specified in such warrant on the same terms as those on which the person who originally lodged the goods would have been entitled to receive the same

The I seal Government may be notification in the local official Gazette, exempt salt and salted fish from the operation of this section, and may in like-manner cancel such exemption

### Rules relating to Goods in a Warehouse

97 The Customs collector, or any officer deputed by him for the purpose, shall have access to any private warehouse licensed under this Act

98 The Customs collector may at any time by order in writing direct that the any goods or prekages lodged in any warehouse shall be opened weighed to therewise examined, and after any goods have been so opened or examined may cause the same to be sealed or marked in such manner as he think of

When any goods have been so sealed and marked after examination, shall not be agun opened without the permission of the Custo ns-college and when any such goods have been opened with such permission, the permission, the permission are shall, if he thinks fit be again sealed or marked as before

199 any owner of goods lodged in a warehruse shall, at any time the hours of business have access to his goods in presence of an officer of tons, and an officer of Customs shall, upon application for the purpose hande in writing to the Customs collector, be deputed to accompare.

When an officer of Customs is specially employed to accompany owner, a sum sufficient to meet the expense thereby incurred eld the Customs collector so require, be paid by such owner to the Custome collector so should be sumshall, if the Customs collector so direct, be paid in 2 to the customs collector so direct, be paid in 2 to the customs.

and such sum shall, it the cute-wine contents of the Customs collector, and after ser contents given and under such rules and conditions as the Chief Customs from time to time prescribes, any owner of goods may, either the contents warehousing the same.

(a) sort, separate, pack and repack the goods, and make are therein as may be necessary for the preservation, so or disposal thereof (such goods to be repacked in the which they were imported, or in such other parties of Customs collector permits)

Benga we Ben P a d O Midris, we Fort'st Gerrem Gazette, 1883, Pt. 1, p. 838, Bombay see Bom R. and O

# (Charter XI - Warehousing)

- (b) fill up any casks of wine, spirit or beer from any casks of the same secured in the same warehouse;
- (c) mix any wines or spirit of the same sort secured in the same warehouse, erasing from the cask all import brands, unless the whole of the wine or spirit so mixed be of the same brand .
- (d) bottle off wine or spirit from any casks,
- (e) take such samples of goods as may be allowed by the Customs collector with or without entry for home consumption, and with or without payment of duty, except such as may eventually become payable on a deficiency of the original quantity

After any such goods have been so separated and repacked in proper or approved packages, the Customs-collector may, at the request of the owner of such goods, cause or permit any refuse, damaged or surplus goods remaining. after such separation or repacking (or, at the like request, any goods which may not be worth the duty) to be destroyed, and may remit the duty payable thereon

Payment of rent and warehouse

except as

this Act. i errod for

101 If goods be lodged in a public warehouse, the owner shall pay monthly, on receiving a bill or written demand for the same from the Customs-collector or other officer deputed by him in that behalf, rent and warehouse-dues at such rates as the Chief Customs-authority or such officer of Customs as such authority from time to time appoints in this behalf may fix I

A table of the rates of rent and warehouse dues so fixed shall be placed

in a conspicuous part of such warehouse

If any bill for rent or warehouse dues presented under this section is not discharged within ten days from the date of presentation, the Customs col lector may, in the discharge of such demand (any transfer or assignment of the goods notwithstanding) cause to be sold by public auction, after due notice in the local official Gazette, such sufficient portion of the goods as he may select

Out of the proceeds of such sale, the Customs collector shall first satisfy the demand for the discharge of which the sale was ordered and shall then pay over the surplus (if any) to the owner of the goods

Provided that the application for such surplus be made within one year from the date of the sale of the goods or that sufficient cause be shown for not

making it within such period

102 No warehoused goods shall be taken out of any warehouse, except. Goods not to be taken out on clearance for home consumption or shipment, or for removal to another of warehouse, warehouse, or as otherwise provided by this Act provided by

103 Any goods warehoused may be left in the warehouse, in which they

<sup>1</sup> For fixing rent in certain places in Burmi, see Bur R. W, for Karachi see Bom R. and O

I. p. 839.

## (Chapter XI - Warehousing)

are deposited or in any warehouse to which they may in manner hereinafter which goods provided be removed, till the expiry of three years after the date of the bond executed in relation to such goods under section 92 The owner of any goods under bond remaining in a warehouse on the expiry of such period shall clear the same for home consumption or shipment in manner hereinafter provided

warehoused

Provided that when the hoense for any private warehouse is cancelled, Goods in and the Customs collector gives notice of such cancelment to the owner of any goods deposited in such warehouse, such owner shall in manner hereinafter on an el provided and within seven days from the date on which such notice is given, license remove such goods to another warehouse or clear them for home consumption or shipment

Of the Removal of Goods from one Warehouse to another

### Corrigendum

In the second line of section 104 of the Sea Customs Act. 1878, printed on page 647 of Volume II of the Unrepealed General Acts of the Governor General in Council, Pourth edition, 1909, for the word "days" substitute the word "years"

1105 Any owner of goods warehoused at any warehousing port may, from rower time to time, within the said period of three years, remove the same by sea or goods from by inland carriage, in order to be re warehoused at any other warehousing one port port

When any owner desires so to remove any goods for such purpose, he shall Procedure apply to the Chief Customs officer, stating the particulars of the goods to be removed and the name of the port to which it is intended that they shall be removed together with such other particulars, and in such manner and form as the Chief Customs authority from time to time prescribes

2106 When permission is granted for the removal of any goods from one Transmiswarehousing port to another under section 105 an account containing the particulars thereof shall be transmitted by the proper officer of the port of removal to the proper officer of the port of destination .

fo goes account of goods to off cers a

and the person requiring the removal shall before such removal enter into Bond for a bond, with one sufficient surety, in a sum equal at least to the duty charge able on such goods for the due arrival and re warehousing thereof at the port warehousof destination within such time, as the Chief Customs authority directs

port of destination du- arrival and re-ID2

<sup>1</sup> For rules under this section for Bengal as to the removal of non duty raid salt made in conjunction with ss. 9 and 130 see Ben. R. and O For the form of bond prescribed under this section see Fort St. George Gazette 1883, Pt

# (Chapter XI -Warehousing)

Such bond may be talen by the proper officer either at the port of removal or at the port of destination as best suits the convenience of the owner

If such bond is taken at the port of destination, a certificate thereof, signed by the proper officer of such port, shall, at the time of the removal of such goods be produced to the proper officer at the port of removal, and such bond shall no be discharged unless such goods are produced to the proper officer, and duly re warehoused at the port of destination within the time allowed for such removal or are otherwise accounted for to the satisfaction of such officer, nor until the full duty due upon any deficiency of such goods, not so accounted for, has been paid

107 The Chief Customs authority may permit any person desirous of

removing warehoused goods to enter into a general bond with such sureties,

in such amount and under such conditions as the Chief Customs ruthority

Remover may enter it to a gen eral bon t

approves for the removal, from time to time, of any goods from one warehouse to another either in the same or in a different port, and for the due arrival and re warehousing of such goods at the port of destination within such time as such authority directs 108 Upon the arrival of warehoused goods at the port of destination, they shall be entered and warehoused in like manner as goods are entered and warehoused on the first importation thereof and under the laws and rules,

in so far as such laws and rules are applicable, which regulate the entry and

Goods on arrival at port of desti nation to be aubject to same laws as goods on f rst importation,

Rond under

section 92 to

withstanding

favorat

contin e in force not-

warehousing of such last mentioned goods 109 Every bond executed under section 92 in respect of any goods shall, unless the Chief Officer of Customs in any case deems a fresh bond to be necessary continue in force, notwithstanding the subsequent removal of such goods to another warehouse or warehousing port

Clearance for Home Consumption or Shipment

Clearance of by a led coods for home consumption

1110 Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for home consumption by paying (a) the duty assessed on such goods under section 87, or, where the duty on such goods is altered under the provisi in hereinafter contained, such altered duty, and (b) all rent, penalties, interest and other charges parable to the Customs collector in respect of such goods.

Clearance of aning for shir ment to

111 Any owner of goo is warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such gords.

<sup>1</sup> For scale of fees to be levied on oil delivered from the Budge-Budge wavehouse see "on R and O

### (Chapter XI -Warehousing)

clear such goods for shipment to a foreign port on payment of all rent, penal ties, interest and other charges payable as aforesaid and without payment of import-duty on the same

port.

Provided that the Governor General in Council may prohibit the ship ment for exportation to any specified foreign port of warehoused goods in respect of which payment of drawback or transhipment has been prohibited under section 49 or 134 respectively

112 Provisions and stores warehoused at the time of importation may, Clearance of within the said period of three years, be shipped without payment of duty for use on board of any vessel proceeding to a foreign port

same for shipment as provisions. etc on vessel proceeding to foreign

ports 113 Application to clear goods from any warehouse for home consumption. Form of or for shipment shall be made in such form as the Chief Customs authority from time to time prescribes 2

application for clearance of goods.

Such application shall ordinarily be made to the Customs collector at Application when to be least twenty four hours before it is intended so to clear such goods

made ment of warehoused

114 If any goods upon which duties are leviable ad valorem or on a tariff- Re assessvaluation receive damage through unavoidable accident after they have been entered for warehousing and assessed under section 87, and before they are goods when damaged cleared for home consumption, they shall, if the owner so desires, be re assessed for duty according to their actual value, and a new bond for the same may, at the option of the owner, be executed for the unexpired term of warehous ıng

115 If, after any goods entered for warehousing have been assessed under Re assessment on alteration of

section 87, any alteration is made in the duty leviable upon such goods or in the tariff valuation (if any) applicable thereto, such goods shall be re assessed duty or in accordance with s [such alteration] 116 If it appear at the time of clearing any wine, spirit, beer or salt from any warehouse for home consumption that there exists a deficiency not other

tariff value. tion. Allowance. in case of wine spirit, wise accounted for to the satisfaction of the Customs collector an allowance beer or salt.

-on account of ullage and wastage shall be made in adjusting the duties there on, as follows (namely) -(a) upon wine spirit and beer in cask to an extent not exceeding the rates

specified below, or such other rates as may, from time to time be

<sup>1</sup> See second note to a 49 (b) supr 2 For till of entry form bont prescribed for Burms see Burms Cazette 1900 Pt IV.

p 599 for Malras are bort \$1 teorge Corrette 1883 Pt I p 839

3 There words were a that to ted I rite wirds the second provision of the 2 of the Sea Customs Act (1878) An endme it Act 1889 (VIII of 1889) Ceneral Act, Vol. IV

<sup>4</sup> As to sprt wastage allowed in Madras, see Fort St George Gazette 1887, Pt. I. p. 760

## (Chapter XI -Warehousing)

prescribed in this behalf by the Local Government and notified in the official Gazette

| For any time not exceeding            | 6  | menths, | $2\frac{1}{2}$ | per cent |
|---------------------------------------|----|---------|----------------|----------|
| exceeding 6 months and not exceeding  | 12 | ,       | 5              | ,,       |
| exceeding 12 conthaind not exceeding  | 18 |         | 71             | ,        |
| exceeding 18 months and not exceeding | 2  | years,  | 10             |          |
| exceeding 2 years and not exceeding   | 3  |         | 12             | ,        |

- (b) in the case of ¹salt warehoused in a public warehouse, only the amount actually cleared shall be charged with customs duties
- (c) in the case of salt warehoused in a private warehouse, wastage shall be allowed at such rate as may be prescribed from time to time by the Local Government and notified in the local official Gazette

117 When any wine, spirit, beer or salt lodged in a warehouse is found to be deficient at the time of the delivery therefrom, and such deficiency is proved to be due solely to ullage or wastage the Chief Customs authority may direct, in respect of any such article that allowance be made in any special case for a rate of ullage or wastage exceeding that contemplated in section 116

# Of the Forfeiture and Discharge of the Bond

118 If any warehoused goods are removed from the warehouse in contravention of section 102, or

if any such goods have not been removed from the warehouse at the expuration of the time during which such goods are permitted by section 103 to remain in such warehouse, or

if any goods in respect of which a hond has been executed under section 92, and which have not been cleared for home consumption or shipment, or removed under this Act are lost or destroyed otherwise than is provided in section 100 or as mentioned in section 122, or are not accounted for to the satisfaction of the Customs collector, or

if any such goods have been taken under section 100 as samples without payment of duty,

the Customs collector may thereupon demand, and the owner of sich goods shall forthwith pay, the full amount of duty chargeable on account of such goods, together with all rent, penalizes, interest and other charges payable to the Customs collector on account of the same

119 If any owner fails to pay any sum so demanded, the Customs.col lector man forthwith either proceed upon the bond executed under section 32, or cause such portion as he thinks fit of the goods (if any) in the warehouse

If goods are improperly

Further special

allowance

removed from ware houses or allowed to remain beyond time fixed or lost or de stroyed

or taken as samples Collector may den and duty etc

Procedure on failure to pay duty etc

### (Charter AI -Warehousing)

on account of which the amount is due, to be detained with a view to the recovery of the demand.

and if the demand be not discharged within ten days from the date of such detention (due notice thereof being given to the owner), the goods so detained may be sold by public auction duly advertised in the local official Gazette

The net proceeds of any sale so made of goods so detained shall be written off upon the bond in discharge thereof to the amount received, and if any surplus be obtained from such sale, beyond the amount of the demand, such surplus shall be paid to the owner of the goods Provided that application for the same be made within one year from the sale, or that sufficient cause be shown for not making the application within such period

No transfer or assignment of the goods shall prevent the Customs collector from proceeding against such goods in the manner above provided, for any amount due thereon

120 When any warehoused goods are taken out of any warehouse, the Noting re-Customs collector shall cause the fact to be noted on the back of the bond

moval of goods

Every note so made shall specify the quantity and description of such goods the purposes for which they have been removed, the date of removal, the name of the person removing them, the number and date of the shipping bill under which they have been taken away if removed for exportation by sea or of the bill of entry if removed for home consumption and the amount of duty paid (if any)

121 A register shall be kept of all bonds entered into for customs duties Pegister of on warehoused goods and entry shall be made in such register of all particulars required by section 120 to be specified

When such register shows that the whole of the goods covered by any bond Cancellation have been cleared for home consumption or shipment or otherwise duly hon is accounted for, and when all amounts due on account of such goods have been paid, the Customs collector shall cancel such bond as discharged in full and shall on demand deliver it, so cancelled to the person who has executed or who is entitled to receive it

#### Viscellancous

122 If any goods in respect of which a bond has been executed under section 92 and which have not been cleared for home consumption are lost or mit duties on destroyed by unavoidable accident or delay the Chief Customs authority may in its discretion remit the duties due thereon

goods lost or destroyed.

Provided that, if any such goods be so lost or destroyed in a grivate warehouse, notice thereof be given to the Customs-collector within forty eight hours after the discovery of such loss or destruction

123 The warehouse keeper in respect of goods lodged in a public ware. Perposition house, and the licensee in respect of goods lodged in a private warehou e shall sty of

# (Chapter XI -- Warehousing )

prescribed in this behalf by the Local Government and notified in the official Gazette

| For any time not exceeding            | 6 men | ths 21 | 21 per cent |  |
|---------------------------------------|-------|--------|-------------|--|
| excreding 6 months and not exceeding  | 12 .  | 5      | ٠,,         |  |
| exceed ng 12 months and not exceeding | 18    | 71     |             |  |
| exceeding 18 months and not exceeding | 2 yea | rs, 10 |             |  |
| exceeding 2 years and not exceeding   | 3 .   | 12     | ,           |  |

- (b) in the case of ¹salt warehoused in a public warehouse, only the amount actually cleared shall be charged with customs duties
- (c) in the case of salt warehoused in a private warehouse, wastage shall be allowed at such rate as may be prescribed from time to time by the Local Government and notified in the local official Gazette

117 When any wine, spirit, beer or salt lodged in a warehouse is found to be deficient at the time of the delivery therefrom and such deficiency is proved to be due solely to ullage or wastage, the Chief Customs authority may direct, in respect of any such article, that allowance be made in any special case for a rate of ullage or wastage exceeding that contemplated in section 116

## Of the Forfeiture and Discharge of the Bond

118 If any warehoused goods are removed from the warehouse in contravention of section 102, or

if any such goods have not been removed from the warehouse at the expiration of the time during which such goods are permitted by section 103 to remain in such warehouse, or

if any goods in respect of which a bond has been executed under section 92, and which have not been cleared for home consumption or shipment, or removed under this Act, are lost or destroyed otherwise than as provided in section 100 or as mentioned in section 122, or are not accounted for to the satisfaction of the Customs collector, or

if any such goods have been taken under section 100 as samples without

y payment of duty,

the Customs collector may thereupon demand, and the owner of such goods
shall forthwith pay, the full amount of duty chargeable on account of such
goods, together with all rent, penalties, interest and other charges payable

to the Customs collector on account of the same 119 If any owner fails to pay any sum so demanded, the Customs collector may forthwith either proceed upon the bond executed under section 92, or cause such portion as he thinks fit of the goods (if any) in the warehouse

Further special allowance

If goods are improperly removed from ware houses or allowed to remain beyond time fixed or lost or de stroyed

or taken as samples Collector may demand duty etc

Procedure on failure to pay duty, etc

### (Charter M - M arehousing)

on account of which the amount is due to be detained with a view to the recovery of the demand .

and if the demand be not discharged within ten days from the date of such detention (due notice thereof being given to the owner), the goods so detained may be sold by public auction duly advertised in the local official Gazette

The net proceeds of any sale so made of goods so detained shall be written off upon the bond in discharge thereof to the amount received, and if any surplus he obtained from such sale, beyond the amount of the demand, such surplus shall be paid to the owner of the goods. Provided that application for the same be made within one year from the sale, or that sufficient cause be shown for not maling the application within such period

No transfer or assignment of the goods shall prevent the Customs collector from proceeding against such goods in the manner above provided, for any amount due thereon

120 When any warehoused goods are taken out of any warehouse, the hoting as Customs collector shall cause the fact to be noted on the back of the hand

goods

Every note so made shall specify the quantity and description of such goods the purposes for which they have been removed, the date of removal. the name of the person removing them the number and date of the shipping bill under which they have been taken away if removed for exportation by sea or of the bill of entry if removed for home consumption and the amount of

duty paid (if any) 121 A register shall be kept of all bonds entered into for customs duties Pegister of on warehoused goods and entry shall be made in such register of all parti-

culars required by section 120 to be specified When such register shows that the whole of the goods covered by any bond Cane Hatten have been cleared for home consumption or shipment, or otherwise duly and ret raise accounted for, and when all amounts due on account of such goods have been paid, the Customs collector shall cancel such bond as discharged in full, and shall on demand deliver it, so cancelled to the person who has executed or who is entitled to receive it

#### **Urscellanrous**

122 If any goods in respect of which a bond has been executed under sec tion 9' and which have not been cleared for home consumption are lost or mit duties. tion 9° and which have not been ciented to: about control authority with destroyed by univerdable accident or delay, the Chief Customs authority with the control authority with the co

Provided that if any such goods be so lost or destroyed ir a rivate ware. house, notice thereof be given to the Customs-collector within forty-eight hours after the discovery of such loss or destruction

123 The warehouse keeper in respect of goods lodged in a public ware. house, and the licensee in respect of goods lodged in a private warehouse shall light

(Chapter XI - Warehousing Chapter XII - Transhipment)

warehouse keeper

be responsible for their due reception therein and delivery therefrom and for their safe custody while dep sited therein, according to the quantity, weight or gauge reported by the Custom house officer who has assessed such goods, allowance being made if necessary for ullage and wastage as provided in sections 116 and 117

Compensa tion for loss or injury

Public ware ho se to be

locked

Power to

public ware

what terms

Expenses of -carriage

to be borne by owners.

Provided that no owner of goods shall be entitled to claim from the Customs collector, or from any keeper of a public warehouse compensation for any loss or damage occurring to such goods while they are being passed into or out of such warehouse, or while they remain therein, unless it be proved that such loss or damage was occasioned by the wilful act or neglect of the warehouse keeper or of an officer of Customs

124 Fvery public warehouse shall be under the lock and key of a ware-

house keeper appointed by the Chief Officer of Customs 125 The Chief Customs authority or such officer of Customs as such audecide n here thorsty from time to time appoints in this behalf, may from time to time detergools ay be dep sited in mine in what division of any public warehouse, and in what manner, and on what terms any goods may be deposited, and what sort of goods may be house an lon

deposited in any such warehouse

126 The expenses of carriage, packing and stowage of goods on their reception into or removal from a public warehouse shall, if paid by the Customspacking etc. collector or by the warehouse leeper, be chargeable on the goods and be defrayed by, and recoverable from, the owner, in the manner provided in section 119

Bengal Bonded Warehouse Association.

127 All the provisions of this Act relating to private warehouses shall be applicable to the warehouses wherein the Bengal Bonded Warehouse Association receives bonded goods

# CHAPTER XII

### TRANSHIPMENT

Power to permit trantass and without pay

128 In the ports of Calcutta, Madras Bombav, Karwar, Karachi, Aden, Rangoon, Maulmain, Akyab, Chittagong and such other ports as the Governor General in Council may from time to time, by notification in the Gazette of India, direct in this behalf,1 the Customs collector may, on application by the owner of any goods imported into such port and specially and distinctly manifested at the time of importation as for transhipment to some other customs or foreign port, grant leave to tranship the same without payment of the duty (if any) leviable at the port at transhipment, and without any security or bond for the due arrival and entry of the goods at the port of destinstion

<sup>1</sup> For not ficat on adding Asgapatam to the above list of ports, see Gazette of Ind a, 1901 Pt. I, p. 31

(Chapter XII -Transhipment)

In any customs-port other than a port in which the preceding clause may for the time being be in force the Customs collector may, on application by the owner of any goods so imported and manifested, grant leave for transhipment without payment of the duty (if any) leviable at such port Provided that, where the goods so transhipped are dutiable, and are to be removed to some other customs port, the applicant shall enter into a bond, with such security as m , be required of him, in a sum equal at least to the duty chargeable on such goods for the due arrival and entry thereof at the port of destination within such time as such Customs collector directs

129 An officer of Customs shall, in every case, be deputed free of charge Superment to superintend the removal of transhipped goods from vessel to vessel 130. The powers conferred on the Customs collector by section 128 shall Subsidiary

ence of tran shipment rules as to transhipment.

be exercised, and the transhipment shall be performed, subject to such 2rules as may from time to time be made by the Local Government No rules made under this section shall come into force until after the expiry

of such reasonable time from the date of the publication of the same as the Local Government may in each case appoint ir this behalf

131 All goods transhipped under the second clause of section 128 for removal to a customs port shall, on their arrival at such port, be entered in like manner as goods are entered on the first importation thereof, and under the laws and rules, in 50 far as such laws and rules can be made applicable, which regulate the entry of such last-mentioned goods

Entry and warehousing on arrival of goods transhipped under section 128, clause 2

132 If two or more vessels belonging wholly or in part to the same owner Tranship. be at any customs port at the same time, any provisions and stores in use or ordinarily shipped for use on board may, at the discretion of the Customs. collector, be transhipped from one such vessel to any other such vessel without payment of import duty

ment of provisions and stores from one vessel to anthr f same owner without pay. ment of duty. Levy of transhipment fee.

133 A transhipment fee on any goods or class of goods transhipped under this Act may be levied at such rates, on each bale or package, or according to weight, measurement, quantity or number, and under such rules, as the Local Government, with the previous sanction of the Governor General in Council. may from time to time, by notification in the local official Gazette, prescribe for each port

134 The Governor General in Council may from time to time, by Power to

<sup>1</sup> For form of such bond, see Fort St. George Gazette, 1883, Pt. I, p. 839 2 Paul fashas whom a fanda wansas -

<sup>(4)</sup> Madras see Mad R, and O

<sup>3</sup> For transh ment fee lev able at (1) Bengal, see Ben, R. and O., (2) Bombay parts and Karachi on certain goods, see Bom. R. and O. (3) Madras see Fort St. George Gazette, 1991. Pt. 1, p 933 , sbid, 1901, Pt. 1, p 137 , and (4) Burma ports, see Bur R. M.

654

Sea Customs

71878: Act VIII.

(Chapter XII -Transhipment

Chapter XIII - Exportation or Shipment and Re landing \

prohibit tranship ment

> No goods to be tranship

ped except as provided

notification in the Gazette of India, prohibit, at any specified port, or at all ports, the transhipment of any specified class of goods, generally or when destined for any specified ports, or prescribe any special mode of tranship ping any specified class of goods

135 Lxcept as provided in this Act, no goods shall be transhipped at any port or place in British India

## CHAPTER XIII

# EXPORTATION OR SHIPMENT AND RI LANDING

No goods to Log R la od etc till entry outpards of vossel.

136 Except with the written permission of the Customs collector, no goods other than passengers baggage or ballast urgently required for a vessel's safety shall be shipped or water borne to be shipped in any vessel in a customs port until an order has been obtained under section 61 for entry outwards of such vessel

When such order has been obtained, the export cargo of such vessel may be shipped subject to the provisions next hereinafter contained

Clearance for shipment

137 I nless the Chief Customs authority shall, in the case of any customsport or wharf or of any class of goods otherwise direct by notification in the local official Gazette no goods except passengers' baggage, shall be shipped or wat r horne to be shipped for exportation until-

- (a) the owner has delivered to the Customs collector, or other proper officer,2 a shipping bill of such goods in duplicate, in such form and containing such particulars in addition to those specified in section 29 as may from time to time be prescribed by the Chief Customsauthority
  - (b) such owner has paid the duties (if any) payable on such goods,
  - ( ) such bill has been passed by the Customs collector

Bond re q ured in certain cases before ex portation

\$138 Before any warehoused goods or goods subject to excise duties, or goods entitled to drawback of customs duties on exportation or goods exportable only under particular rules or restrictions, are permitted to be exported the owner shall if required so to do, give security by bond in such sum, not exceeding twice the duty leviable on such goods, as the Customs collector directs,

a e a note to e 40 fb) augra t on incomplete

see Bur R. M. e 1853, Pt. I,

For rules for the export of salt to Br tish Ind an ports, see Mad R and O

(Chapter XIII - Exportation or Shipment and Re-landing)

with one sufficient surety, that such goods shall be duly shipped, exported and landed at the place for which they are entered outwards, or shall be otherwise accounted for to the satisfaction of such officer

139 When goods are cleared for shipment on a shipping bill presented Additional after port clearance has been granted the Customs collector may, if he thinks fit levy in addition to vey duty to which such goods are ordinarily liable, for shipment a charge not exceeding-

charge on goods cleared after portclearance

- (a) in the case of goods hable to duties on fixed tariff valuations, one per granted cent on the tariff value.
- (1) in the case of all other goods one per cent on the market value

tion of five clear worling days after the vessel on which such goods were landing and intended to be shipped, or from which they were re landed, has left the port, give information of such al ort shipment or re landing to the Customs collector

Notice of non ship ment or re return of duty thereon.

Upon an application being made to the Customs collector, any duty levied upon goods not shipped, or upon goods shipped and afterwards re landed. shall be refunded to the person on whose I chalf such duty was paid Pro vided that no such refund shall be allowed unless information has been given as above required

141 If, after having cleared from any customs port, any vessel, without Goods re having discharged her cargo returns to such port, or puts into any other customs port, any owrer of goods in such vessel, if he desires to land or tran ship the same or any portion thereof for re export, may, with the consent of returning to the master, apply to the Customs collector in that behalf

landed or transhipped from a vessel port or putting into another port.

The Custon's collector, if he grant the application, shall thereupon send an officer of Customs to watch the vessel, and to tal e charge of such goods dur

ing such re landing or transhipment

Such goods shall not be allowed to be transhipped or re exported free of duty by reason of the previous cettlement of duty at the time of first export, unless they are lodged and remain, until the time of re export, under the custody of an offcer of Customs, in a place appointed by the Customs collector. or are transhipped under such custody

All expenses attending such custody shall be borne by the owner

142 In either of the cases mentioned in section 141, the master of the Vesselre nessel may enter such vessel inwards and any owner of goods therein may, port may with the consent of the master, land the same under the rules herein contained enter and for the importation of goods

land goods under im port rules.

1For rules for the adjustment and payment of refunds on short shipment issued under this section are Bur R M.

(Chapter XIII —Fxportation or Shipment and Re landing Chapter XIV — Spirit)

In every such case any export duty levied shall be refunded to and any amount paid in drawback shill be recovered from such owner

of ring

143 The Customs collector may on application by the master of any vessel which is chige! before completing her voyage to put into any customsport for repairs permit him to land the cargo or any portion thereof and to place it in the custody of an officer of Customs during such repairs and to reship and export the same free of duty

All expenses attending such custody shall be borne by the master

#### CHAPTER XIV

#### SPIRIT

Exportation of Spirit under Bond for Fxcise duty

es for
oval of
from
tillery
pry
at of duty
exports

144 The Chief Customs authority may from time to time make rules a prescribing the conditions on which spirit manufactured in British India may be removed from any licens d distillery for exportation without payment of excise duty

The person so removing any such spirit shall execute a bond with one or more sureties in the form natived C hereto annexed or (when such form is mapplicable or insufficient) in such other form as the sail Authority from time to time prescribes conditioned that such duty shall be jaid on all such spirit as is —

(a) not exported within four months from the date of the bond or

(1) exported to a customs port unless \*[either] the payment of excise duty as provided by this Chapter in respect thereof at the port of destination\* [or the delivers of the spirit into a warehouse appointed in this behalf by the I ocal General having authority at this portlis within six months from the date of the bond proved to the satisfaction of the proper officer.

The Chief Officer of Customs of the rort of exportation may on sufficient cause shown extend for a furtler term not exceeding four months the period allowed for the exportation of any such spirit of for the production of such proof that duty has been \$^5 [so paid or the spirit so delivered]

Spirit for export to be

145 Spirit intended for exportation under bond for the excise duty shall

<sup>1</sup> For such rules see Ben. R. and O Mad. R and O \*These words were inserted by a 1 (t of the Sea Customs Act (18"8) Amendment Act 1887

<sup>(</sup>II of 1897) General Acts Vol IV

These words were substituted for the word paid by Act II of 1897 s. 1 (2) 354

(Chapter XIV -Stant)

If except when provision is made by any enactment for the time being in force taken direct for its being intermediately deposited in a licensed warehouse. I be taken from the distillery direct to the custom house, under passes to be granted for that Custom purpose by the officers of Excuse

146 Spirit brought to the custom house for exportation under bond for the exceed duty 2 [may ] previous to shipment be gauged and proved by an officer of Customs and the quantity of spirit for which credit is to be given in the settle ment of any bond 2 [may] be determined in the same manner

147 Excise duty shall be recoverable previous to shipment upon the excess (if any) of the quantity of spirit passed from a distillery over the quan tity ascertained by gauge and proof at the custom house, less an allowence deference for ullage and wastage at such rates as are from time to time prescribed by the Local Government and notified in the local official Gazette

148 Notwithstanding anything in the Indian Tariff Act, 1882,] spirit Duty on exported under bond for excise duty from any customs port to any other spirit exportcustoms port shall be charged at the port of importation with excise duty at the ordinary rate to which the spirit of the like kind and strength is liable one Indian at such port

Provided that the Local Government may authorize the import of such spirit without the payment of that duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the Local Government in this behalf, and the excise duty thereon is to be paid on the removal of the spirit from a warehouse so appointed

149 Spirit brought to the custom house for to a warehouse licensed Removal for under any enactment for the time being in forcel for exportation under bond for the excise duty may, on payment of such duty, be removed for local con sumption under passes to be granted for that purpose by the officers of Ex

Credit for every such payment shall be given in discharge of the bond to which it relates

Drauba L of Excise duty on Export of Spirit

7150 A drawback of excise duty paid on spirit manufactured in British Drawback of I These words were interied by the Excise and Sea Customs Law Amendment Act 1855 (IX

2 May was su stituted for ' shall "by a 2 of the Sea Customs Act (18"8) Amendment

from distil lery to house under Gauging and

proving of sourst. Duty to be recovered on anv

in spirit under bond. ed under bond from port to

another

local con shmption of spirit in tended for exportation.

of 1885) General Acts Vol. III

(Chapter XIV -Spirit)

excise duty on spirit exported India and exported to any foreign port under the provisions of section 138 shall be allowed by the Customs collector at the port of exportation

Provided that the exportation be made within one year from the date of payment of such excise duty, and that the spirit when brought to the custom house, be accompanied by a pass in which such payment is certified

Such drawback shall be regulated by the strength and quantity of such spirit as ascertained by gauge and proof by an officer of Customs

### Mascellaneous

Differential duty to be levied in certain cases 151 '[Notwithstanding anything in the \*Indian Tariff Act 1882,] if spirit manufactured in British India upon which excise duty has been paid is exported from one customs port to another, and the rate of local excise duty at the port of importation is higher than that already paid upon such spirit, a differential duty shall be charged thereon at such rate as the Local Govern ment at such port may, by notification in the local official Gazette, from time to time presents \*

'Provided that the Local Government may authorize the import of such spirit without the payment of the differential duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the Local Government in this behalf, and the differential duty is to be paid on the re moval of the spirit from a warehouse so appointed

Rum shrub etc how charged with duty 152 Rum shrub, cordial and other such liquor prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery shall be charged with excise duty under this Act according to the quantity of spirit used in its preparation as ascertained by such surveyor or officer

The provisions of this Act respecting spirit, except such as relate to gauge and proof, shall apply to such liquor

respecting
spirit applied
to sich
liquors
Conditions
of drawback
and remission of duty
on spirit

153 No drawback shall be allowed for any spirit on which duty has been paid nor shall the duty due on any spirit under bond be remitted, unless the spirit is shipped from the custom house, and in a vessel whereon an officer of Customs has been appointed to superintend the receipt of export cargo

Re land of spirit shipped

154 No spirit shipped for exportation shall be relanded without a special pass from an officer of Facise, in addition to any permission of an officer of Customs which may be required by the law for the time being in force

Power to make rules for ascertam 155 When by any law for the time being in force a special duty is imposed on spirit rendered unfit for human consumption, the Local Government may

(Chapter AV -Coasting Trade)

from time to time male I rules for ascertaining and determining what spirit ing that im imported into British India shall be deemed to have been effectually and perma nently so rendered unfit, and for causing such spirit to be so rendered, if necessary, by their own officers and at the expense of the person importing the same, before the customs duties leviable thereon are levied

In the absence of any such rules, or if any dispute arises as to their appli cability, the Chief Customs officer shall decide what spirit is subject only to the said special duty, and such decision shall be final

ported spirit rendered unfit for human consumption.

Decision where no rules or then applicability disputed.

### CHAPTER XV

## COASTING TRADE

156 Except as hereinafter provided, nothing in Chapters VII, IX, X and Chapters sections 136 139 and 141 to 143 inclusive, of this Act, shall apply to coasting and part of vessels or to goods imported or exported in such vessels

XIII mappli cable to coasting trade

157. The Local Government may, from time to time, make rules consistent Power to with the provisions of this Chapter .-(a) extending 2 any provision of the Chapters and sections mentioned

regulato coasting trade

- in section 156, with or without modification, to any coasting vessels or to any goods imported or exported in such vessels . (b) exempting any such vessels or goods from any of the other provisions
- of this Act except those contained in this Chapter . s(c) prescribing the conditions on which goods, or any specified class of

goods may be (1) carried in a coasting vessel, whether shipped at a foreign port, or at a customs port, or at a place declared under section 12 to be a port, (2) shipped in a coasting vessel before all

Went theo  $u_{\lambda}u$ 

articles carried which are in lorce in-(1) Bengal see Ben. P and O, and as to rules regarding the conditions under which hushed and unhushed rice may be shipped from the Port of Aillah see Gazette

<sup>1</sup> For rules for the importation of spirits rendered unfit for human consumption made by the Government of-1 7 .... 1

of India 1000 Pt. II p. 609 (2) Bombay see Bom. R. and O (3) Burma see Bur P. M.

<sup>(4)</sup> Madras, see Mad. R. and O.

## (Chapter XV -Coasting Trade)

dutable goods and goods brought in such a vessel from a foreign port have been unladen,

(d) prohibiting the conveyance of any specified class of goods generally, or to or between specified ports in a coasting vessel

1158 Before any coasting vessel departs from the port of lading or, when there are more ports of lading than one, the first port of lading, the master shall fill in, sign and deliver to the Customs collector a manifest in duplicate, containing a true specification of all goods to be carried in such vessel in such form, and accompanied by such shipping bills or other documents, as may from time to time be prescribed? by the Chief Customs authority

If the Customs collector sees no objection to the departure of the vessel, he shall retain the duplicate and return the original manifest, dated and signed by him, together with its accompaniments, and such manifest shall be the port clearance of the vessel, unless, under the general orders of the Chief Customs authority, a separate port clearance be prescribed

Delivery of manifest, etc , on arrival

Coasting

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ing port of lading

tain port-

159 Within twenty four hours after the arrival of any coasting vessel at any customs port whether intermediate or final, and before any goods are there discharged, the manifest, together with the other documents referred to in section 158, shall be delivered to the Customs collector, who shall note on the manifest the date of delivery

If the vessel has touched at any foreign port between such port of arrival and her last preceding customs port of departure, the master shall append to the manifest a declaration to that effect, and shall also indicate on the manifest the portions (if any) of the cargo therein described which have been discharged, and subjoin thereto a true specification of all goods shipped at such port

If the customs port of arrival be an intermediate port, and a portion only of the cargo is to be discharged thereat, the master shall likewise so deliver an extract from the manifest signed by him, relating to such portion, and the Customs collector shall, after venfying such extract, return to him the original manifest and all documents accompanying it except those relating to such portion

If in any case the cargo actually on board any coasting vessel on her arrival at any custums port does not, owing to short shipment, re landing or other cause, correspond with the specification thereof in the manifest returned to the master under the second clause of section 168, such master shall, before delivery of such manifest under this section, note thereon the particulars of the difference

The Customs collector, when satisfied with the manifest and other documents, shall grant an order to break bulk

<sup>&</sup>lt;sup>1</sup> For rule for obtaining port-clearances by tindals of country coasting vessels see Bombay Government Gazette 1884 Pt. I p. 491

<sup>2</sup> For prescribed form of shipping bill in Burms see Burma Gazette 1900, Pt. IV, p 700

## (Chapter XV - Coasting Trade)

160 Before any coasting vessel departs from any customs port at which Departure she has touched during her voyage, the master shall re deliver the original from inter manifest to the Customs collector, after indicating thereon the portions (if any) of the cargo therein described which have been discharged, and sub joining thereto a true specification of all goods shipped at such port shall also deliver a duplicate, signed by him, of the specification so subjoined

mediate port.

If the Customs collector sees no objection to the departure of the vessel. he shall preceed as prescribed in the second clause of section 158

161 The Customs collector may for sufficient reason, refuse port clearance Power to to any consting vessel declared to be bound to, or about to touch at, any require bond before portcustoms port, unless the owner or master gives a bond, with such security as clearance a the Customs collector deems sufficient for the production to the Customs collector of a certificate from the proper officer of the port to which such vessel is said to be bound, of her arrival at such port within a reasonable time to be prescribed in each case by the Customs collector

162 When permission has been granted by the Customs collector for the Discharge of discharge of cargo from any coasting vessel-

- (a) if the vessel has not touched at any intermediate foreign port in the course of her voyage, and has not on board any dutiable goods, the cargo may be forthwith landed and removed by the owner without entry thereof at the custom house and clearance for home consumption, but subject to such general check and control as the Chief Customs authority may from time to time by rules prescribe. (b) if the vessel has so touched at any such port or has on board any such
  - goods, such vessel shall be subject to all the provisions of Chapter VII of this Act relating to vessels arriving and such goods, and until such goods have been duly discharged all other goods on board shall be subject to the provisions of Chapter IX of this Act relating to goods imported

163 If any of the goods on board of any coasting vessel be subject to any Goodson excise duty, they shall not be unladen without the permission of the proper coasting vesofficer of Excise

sci. if excisable, not to be unladen without per misston, Grant and revocation of general pass.

164 Notwithstanding anything hereinbefore contained, the Chief Customsauthority may authorize the Customs collector to grant a general pass, on any conditions which such Authority thinks expedient for the lading and clearance.

<sup>1</sup> For notification issued under this section, see Fort St. George Gazette, 1883, Pt. I. n. 842

<sup>2</sup> For General Pass Rules in force in-

<sup>(1)</sup> Bengal, see Ben. R. and O. (2) Bombay, see Bombay Government Gazette, 1883, Pt. II, p. 787, (3) Burma, see Bor R. M., and

<sup>(4)</sup> Madras, eee Fort St. George Gazette, 1889, Pt. II, p. 449.

and for the entry and unlading, of any coasting steam vessel at any ports of despatch or destination, or at any intermediate ports at which she touches for the purpose of receiving goods or passengers

Such pass shall be valid throughout British India, or for such ports only as may be specified therein

Any such general pass may be revoked by order of the Chief Customsauthority by whom the grant thereof was authorized, by notice in writing under the hand of such Authority delivered to the master or to the owner of such steam vessel, or to any of the crew on board

165 The Chief Customs authority may direct that the master of any coast ing vessel which is square rigged or propelled by steam shall keep or cause to be kept, a cargo book stating the name of the master, the vessel, the port to which she belongs, and the port to which on each voyage she is bound

At every port of lading such master shall enter, or cause to be entered in such book the name of such port and an account of all goods there taken on board of such vessel with a description of the packages, and the quantities and descriptions of the goods, contained therein or stowed loose, and the names of the respective shippers and consignees, in so far as such particulars are known to him

At every port of discharge of any such goods such master shall enter, or cause to be entered, in such book the respective days on which such goods or any of them are delivered out of such vessel

The respective times of departure from every port of lading and of arrival at every port of discharge, shall in like manner be duly entered

Fvery such master shall, on demand produce his cargo-book for the inspection of any officer of Customs, and such officer shall be at liberty to make any note or remark therein

The Chief Customs authority may in the case of any vessel the master whereof has been directed to keep a cargo-book under this section, dispense with the manifest required under sections 158, 159 and 160

166 Any duly empowered officer of Customs may go on board of any coasting vessel in any port or place in British India, and may at any period of a voyage search any such vessel and examine all goods on board, and all goods then lading or unlading and may demand the production of any document which ought to be on board of any such vessel

The Customs collector may further require that any such document belong. ing to any coasting vessel then in port shall be brought to him for inspection

Rules res. pecting cargo books to be kent by masters of coasting yes

Power to board and eramina coasting vessels

## (Chapter XVI -Offences and Penalties.)

#### CHAPTER XVI

#### OFFENCES AND PENALTIES.

167 The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same for offences, with reference to such offences respectively.

| Offences.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties.                                                                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|----------------------------------------------------------------------------------|
| 1 -Contravening any rule made under this Act                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | General .                                                       | Penalty not exceeding five<br>hundred rupees                                     |
| 2—If any goods be landed or shipped, or if an attempt be made to land or ship any goods, or the ship and t | 11                                                              | such goods shall be hable to<br>confiscation                                     |
| 3—If any person ship or land goods, or sid in<br>the shipment or landing of goods, or<br>knowingly keep or concert, or knowingly<br>permit or procure to be kept or con-<br>pression of the same of the same of the<br>permit or procure to the same of the<br>intended to be shipped or landed, con-<br>trary to the provisions of this Act; or<br>I any person be found to have been on<br>board of any vessel liable to confiscation<br>on account of the commission of a noffence<br>under I/No 4] of this section, while such<br>vessel is within any bay, river, creek or<br>vessel is within any bay, river, creek or<br>arm of the sea which is not a port for the<br>T(hipment and landing) of goods.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | General .                                                       | such person shall be hable to<br>a penalty not exceeding one<br>thousand rupees. |
| 4 — Hany vessel which has been within the limits of any port in British India with cargo on board. Be afterwards found in vessel lawfully underlying the cargo,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | n                                                               | such vessel shall be liable to<br>confiscation.                                  |

<sup>1</sup> These words and figure were substituted for the word and figure "No 2" and for the words "landing and shipment" respectively by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol IV.

<sup>2</sup> See footnote to No. 3, supra.

## (Chapter XVI.-Offences and Penalties.)

| Section of<br>this Act to<br>which of-<br>fence has<br>reference. | Penalties.                                                                                                                                                                                                             |
|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11                                                                | such goods shall be liable to<br>confiscation, and the master<br>of every such tag steamer or<br>pilot-ressel shall be liable to<br>a penalty not exceeding one<br>thousand rupees                                     |
| 17                                                                | the master of such vessel shall<br>be liable to a penalty not<br>exceeding one thousand<br>rupees                                                                                                                      |
|                                                                   | the master of such vessel shall<br>be liable to a penalty not ex-<br>ceeding five bundred rupees,<br>and the vessel, if not entered,<br>shall not be allowed to enter<br>until the penalty is paid.                    |
| 17                                                                |                                                                                                                                                                                                                        |
| 18 & 19                                                           | such goods shall be hable to<br>confinention;<br>as concerned in any<br>as ch offence shall be hable to<br>a penalty not exceeding three<br>times the value of the goods,<br>or not exceeding one thou-<br>sand rupces |
|                                                                   |                                                                                                                                                                                                                        |
| {                                                                 |                                                                                                                                                                                                                        |
|                                                                   | this Act to which of-fence has reference.                                                                                                                                                                              |

## (Chapter XVI -Offences and Penalties)

| Offences                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| B—If, upon an application to pass any goods<br>through the Curtom house, any person<br>out being the owner of such goods, and<br>not having proper and sufficient author<br>ity from the owner, subscribes or attests<br>any document relating to any goods on<br>behalf of such owner.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | General .                                                       | such person shall be hable to a<br>penalty not exceeding one<br>thousand rupees                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 10 — If any goods, on the entry of which for re-<br>export drawback has been paid, are not<br>duly cryptage and the state of the state<br>of the state of the state of the state of the<br>provisions of this Act),                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 42 & 43                                                         | such goods, together with any reased used in an unshipping or re landing them, shall be liable to confiscation, and the naster of the vessel from which such goods are so unshipped or re landed, and any person by whom or by whose orders or means or re landed, or who said or re landed, or who said or re saided, or who said or is concerned in such unshipping or re landed, or who said to is concerned in such unshipping or re landing, shall be liable to a pensity not exceeding three times the value of such goods or not exceed ing one thousand rupees. |
| 11—If any wans, spirit, provisions or afters be not laden on board of the vessel on board of which we have the notation of the state of | 41 to 48                                                        | such wine, spirit, provisions or<br>stores shall be liable to con-<br>fiscation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 12—If any goods be entered for drawback,<br>which are of less value than the amount<br>of the drawback claimed,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 50                                                              | such goods shall be liable to confiscation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 13 — If, in any river or port wherein a place has been fixed under section 53 by the Local Government, any vessel arriving passes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 53                                                              | the master of such vessel shall<br>be liable to a penalty not ex-<br>ceeding one thousand rupees                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 14 — If the n safer of any vessel arriving, which<br>senams outside or below any place so<br>fixed, withing onsits, for the space of<br>twenty four hours after anchoring, to<br>deliver a manifest as required by this<br>Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                 | such master shall be liable to a<br>penalty not exceeding one<br>thousand rupees.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

## (Chapter XVI .- Offences and Penalties.)

| Offences                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Section of<br>this Act to<br>which of-<br>fence has<br>reference. | Penalties                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5—If any goods are put, without the authority of the proper officer of Customs, on board of any ting steamer or pilot-vessel from any seagong vessel inward bound, or if any goods are pat, without such authority, out of any ting steamer or pilot vessel for the purpose of being put on board of any such vessel outward bound, or if a no node on which drawback has been if a node on the purpose of the put of the purpose of the put  | 11                                                                | such goods shall be liable to<br>confiscation, and the master<br>of every such tug steamer or<br>pilot-ressel shall be liable to<br>a penalty not exceeding one<br>thousand rupees                                         |
| 6—If any vessel arriving at, or departing from, any rustoms port fails when so required under section 17, to bring to at any such exaction as has been appointed by the Chief Customs rutbortly for the boarding or landing of an officer of Customs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 17                                                                | the master of such vessel shall<br>be hable to a penalty not<br>exceeding one thousand<br>rupees                                                                                                                           |
| 7 — If any vessel arriving at any customs port, after having come to its proper place of mooring or unlading, remover from such place, except with the authority of the property of the companies of the property of the prop |                                                                   | the master of such vessel shall<br>be liable to a penalty not ex-<br>ceeding five hundred uppers,<br>and the vessel, if not entered,<br>shall not be allowed to enter<br>until the penalty is raid                         |
| e                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 17                                                                |                                                                                                                                                                                                                            |
| the importation or exportation of ex | 18 & 19                                                           | such goods shall be hable to<br>confrestion; any person concerned in any<br>such offerce shall be lable to<br>a penalty not exceeding three<br>times the value of the goods,<br>or not exceeding one thou-<br>sand rupees. |
| be contained by the con |                                                                   |                                                                                                                                                                                                                            |

## (Chapter XVI -Offences and Penalties)

| Offences.                                                                                                                                                                                                                                                                               | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9—If, upon an application to pass any goods<br>through the Custom house, any person<br>not being the owner of such goods, and<br>not having proper and sufficient author<br>ity from the owner, subscribes or attests<br>any document relating to any goods on<br>behalf of such owner. | General .                                                       | such person shall I olial to a<br>penalty not exceeding one<br>thousand rupers                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 10—If any goods, on the entry of which for re-<br>export drawbach has been paid, are not<br>considered any contemport. (not having<br>the landed at any customs-port. (not having<br>been duly re landed or discharged under<br>the provisions of this Act),                            | 42 & 43                                                         | such pools together with any very layed in so multiply go or relanding them, shall be laid to conferentially and the rester of the versel from which such pools are so untilitied or relanded, and any person by whom or by whose orders or means and any person by who are such goods are so untiliped as concerned in such unabliped is concerned in such unabliping for or relanding shall be laid to a penalty not exceeding the times it evalue of such producer in terestial ing one this waste representations. |
| 11.—If any wine, spirit, provious or stores be<br>not lader on board of the vessel on<br>board of which they should, under the<br>provious of section 52, 46, 47 or 49, be<br>lader, or be unlader from such vessel<br>with large the premision of the proper<br>officer of Cottom.     | 44 to 48                                                        | such wine, spirit providions or<br>atores shall be list be to con-<br>fection.                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 12.—Heart goods be entered for drawbark,<br>which are of less value than the amount<br>of the drawbark claimed,                                                                                                                                                                         | න                                                               | such goods shall be liable to<br>confinction                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 12.—II. in any tire or port wherein a place has<br>been fixed under seven 50 by the Local<br>Government, my reveal arritant passes<br>berood on 5 parts, before during of a<br>control of 50 parts, before 50 parts,<br>could be promised to recover<br>the same.                       | 53                                                              | the master of rule vessel shall<br>be liable to a penalty not es-<br>coeffigions the entire rupose                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 14 If the name of our wood arrang, which<br>remain counts or howe are pure or<br>first. Within count, for the pure<br>of swear four some after and orang, to<br>colors a manufar as recognit by the<br>for.                                                                             | į                                                               | emb maxing shall be list to a<br>preatty not exceeding one<br>thomsed rupess                                                                                                                                                                                                                                                                                                                                                                                                                                           |

## (Chapter XVI .- Offences and Penalties.)

| Offences                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Section of<br>this Act to<br>which of-<br>fence has<br>reference | Penalties                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5 — If any goods are put, without the authority<br>of the proper officer of Customs, on board<br>of any tug steamer or pilot vessel from                                                                                                                                                                                                                                                                                                                                                                                                                                 | 11                                                               | such goods shall be liable to<br>confiscation, and the naster<br>of every with the steamer or<br>pilot vessel shall be liable to<br>a penalty not exceeding one<br>thousand rupees                                             |
| if any goods on which drawback has been<br>granted are put, without such authority,<br>on board of any tug steamer or pilot ves<br>sel for the purpose of being re landed,                                                                                                                                                                                                                                                                                                                                                                                               |                                                                  |                                                                                                                                                                                                                                |
| 6 -If any vaccal among to and a star for                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 17                                                               | the master of such vessel shall<br>be hable to a penalty not<br>exceeding one thousand<br>rupees                                                                                                                               |
| 7 - If any vessel arriving at any customs port, after having come to its proper place of mooring or unlading, removes from such place, except with the authority of the                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                  | the master of such vessel shall<br>be liable to a penalty not ex-<br>ceeding five hundred rupes,<br>and the vessel, if not entered,<br>shall not be allowed to enter<br>until the penalty is paid.                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 17                                                               |                                                                                                                                                                                                                                |
| 8 —If any goods, the importation or expertation of which is for the time being probabilited or restricted by or under Chapter IV of this Act, be imported into or experted from British India contrary to such probabilities or restriction, or all any attempt be made so to import or experted any such goods, or in any package produced to any officer of Cavious as containing no such goods, or if any such goods, or any dutable goods be found either before or after landing or shipment to have been concessed in any manner to board of any vessel within the | 18 & 19                                                          | such goods shall be liable to<br>conflication,<br>any person concerned in any<br>such offence shall be liable to<br>a penalty not exceeding three<br>times the value of the good,<br>or not exceeding one thou-<br>sand rupees |
| trict on,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | }                                                                |                                                                                                                                                                                                                                |

## (Chapter XVI -Offences and Penalties)

| Offences                                                                                                                                                                                                                       | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9_7'                                                                                                                                                                                                                           | General                                                         | such person shall be hable to a<br>penalty not exceeding one<br>thousand rupees                                                                                                                                                                                                                                                                                                                                                                                                                            |
| any document relating to any goods on<br>behalf of such owner,                                                                                                                                                                 |                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 10 — If any goods, on the entry of which for receptor-to-thewhack has been paid, are not exported to the property of the provisions of this Act),              | 42 & 43                                                         | such goods, together with any vessel used in so unabipping or re landing them, shall be liable to confiscation, and the n aster of the vessel from which such goods are so unshipped or re landed, and any person by whom or by whose orders or means or re landed, or who aske or is concerned in such unshipping or re landing, shall be liable to a penalty not exceding three times the value of such goods or not exceeding three times the value of such goods or not exceeding one thousand rupees. |
| 11 — If any wine, spirit, provisions or stores be not laden on board of the resel on board of which they should, under the provisions of section 45, 46, 47 or 48, be without the permission of the proper officer of Customs, | 41 to 48                                                        | such wine, spirit, provisions or<br>stores shall be liable to con<br>fiscation                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 12 —If any goods he entered for drawback,<br>which are of less value than the amount<br>of the drawback claimed,                                                                                                               | 50                                                              | such goods shall be liable to<br>confiscation.                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 13 —II, in any river or port wherein a place has                                                                                                                                                                               | 53                                                              | the master of such vessel shall<br>be liable to a penalty not ex-<br>ceeding one thousand rupees                                                                                                                                                                                                                                                                                                                                                                                                           |
| Bung ,                                                                                                                                                                                                                         | Į.                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 14—If then aster of any vessel arriving, which<br>remains outside or below any piace so<br>fixed, wildly omits, for the space of<br>twenty four hours after anchoring, to<br>deliver a manifest as required by this<br>Act.    |                                                                 | such master shall be liable to a<br>penalty not exceeding one<br>thousand rupees.                                                                                                                                                                                                                                                                                                                                                                                                                          |

# (Chapter XVI .- Offences and Penalties )

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | ~~~~                                                            |                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Offences,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties                                                                                                                                                                                                                                                                                                                                                                              |
| 15 — If, after any vessel arriving has entered any<br>customs port in which a place has not<br>been fixed under section 53, the master of<br>such vessel wifully omits for the space<br>of twenty four hours after anchoring to<br>deliver a manifest as required by thus Act,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 54                                                              | such master shall be hable to a<br>penalty not exceeding one<br>thousand rupees                                                                                                                                                                                                                                                                                                        |
| section 53 the per the | 55 & 63                                                         | the person delivering such manifest shall be liable to a probably not exercizing und thousand rupees.                                                                                                                                                                                                                                                                                  |
| 17—11 any goods entered in the import manifect of a vessel are not found on board of the vessel, or if the quantity so found is short, and if such deficiency is not accounted for to the satisfaction of the officer in charge of the custom house,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | દદ દલ                                                           | the master of such vessel shalt<br>be liable to a penaltr not ex-<br>ceeding twice the amount of<br>duty chargeable on the miss<br>ang or deficient goods, if they<br>be dutiable and the duty<br>leviable thereon can be as-<br>cettained, or otherwise to<br>a penaltr not exceeding five<br>hundred rupees for every<br>mussing or deficient package<br>musing or deficient package |
| 18 — If any person required by this Act to receive a manifes. From any master of a reset refuses so to do or fails to counter sign the same or to enter thereon the particulars referred to in section 56,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 53, 54 & 56                                                     | or separate article such ryson shall be liable to a penalty not exceeding five hundred rupees.                                                                                                                                                                                                                                                                                         |
| 19 — If bulk be broken in any vessel previous to<br>the grant by the Customs collector of an<br>order for entry inwards or a special pass<br>remitting bulk to be broken.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 57 & 59                                                         | the master of such resset shall<br>be hable to a penaity not ex-<br>ceeding one thousand rupees                                                                                                                                                                                                                                                                                        |
| such bill or copy has been altered with fraudulent intent, or if the goods mentioned in any such ill or copy have not leen load for happed as abown therein or arms such bill of fading or any such as such bill of fading or any bill of fading o | 59                                                              | the master of the reesel shall<br>be liable to a penalty not ex-<br>ecceling one thousand rupees                                                                                                                                                                                                                                                                                       |
| of which a copy is delivered, has not been<br>made previously to the departure of the                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                 |                                                                                                                                                                                                                                                                                                                                                                                        |

## (Chapter XVI.-Offences and Penalties.)

| Offences                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ressel from the place where the goods referred to in such bill of lading were shapped or if any part of the cargo has been staved, destroored or thrown overboard, or if any puckage has been opened and such part of the cargo or such package be not at counted for to the satisfaction of the Customs collector.                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                 |                                                                                                                                                                                                                                                              |
| 21 —If any master of a vessel attempts to de<br>part without a port clearance,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 62                                                              | such master shall be liable to<br>a penalty not exceeding five<br>hundred rupees                                                                                                                                                                             |
| 22 If any vessel actually departs without a port clearance,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 62                                                              | the master of such vessel shall<br>be liable to a penalty not ex-<br>ceeding one thousand rupees                                                                                                                                                             |
| 23 — If any pilot takes charge of any vessel pro-<br>ceeding to sea, notwithstanding that the<br>master of such vessel does not produce a<br>port clearance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 62                                                              | such pilot, on conviction be-<br>fore a Magistrate, shall be<br>liable to fine not exceeding<br>one thousand rupees                                                                                                                                          |
| 24 — If any master of a vessel refuses to receive<br>on board an officer of Customs deputed<br>under section 67,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 68                                                              | such master shall be liable<br>to a penalty not exceeding<br>five hundred rupees for each<br>day during which such<br>officer is not received on<br>board, and the ressel, if not<br>entered shall not be allowed<br>to enter until such penalty is<br>paid. |
| 25 —11                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 63                                                              | such master shall, in each such<br>case, be liable to a penalty<br>not exceeding five hundred<br>rupees                                                                                                                                                      |
| with a due allowance of fresh water, and with the means of cooking on board,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                 | -                                                                                                                                                                                                                                                            |
| 26.— W. any matter of a. vessel, values, to allow such resect, or any box, place or closed receptacle in such vessel, to the peach of the receptacle in such vessel, to be searched when so required by an officer of Customs bearing a written order to search, or if an officer of Customs places any lock, mark or seal upon any goods in a vessel, and such pock mark or seal is writfully opened, alfered or broken, before due delivery of such goods are secretly conveyed in any such goods are secretly conveyed it any such goods are secretly conveyed it any such shows, or entrance to the hold of a vessel, after brung been fastened down by an officer of Customs, is opened with out his permission, |                                                                 | "the marker of such researched!".  be lishle upon convention before a Magnirate, to a fine not exceeding one thousand rupees.                                                                                                                                |

# (Chapter XVI .- Offences and Penalties.)

| Offences                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties                                                                                                                                                                                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 27—If the master of any vessel laid up by the<br>withdrawal of the officer of Customs shall,<br>before application; ansade by him for an<br>officer of Customs to superintend the re-<br>cept of cargo, cause or suffer to be put<br>on board of such vessel any goods what-<br>ever in contravention of section 70.                                                                                                                                                   | 70                                                              | such master shall be liable to<br>a penalty not exceeding on<br>thousand rupees and the<br>goods, if protected by a pass,<br>shall be liable to be re landed<br>for examination at the ex-<br>pense of the vessel, and, is<br>not protected by a pass<br>shall be liable to confiscation                             |
| 28 — If any master of a vessel in any case other<br>than that provided for by No. 27, causes<br>or suffers any goods to be discharged,<br>shipped or water borne contrary to any<br>of the provisions of section 70, 72 or 75,                                                                                                                                                                                                                                         | 70, 72 & 75                                                     | such master shall be hable to<br>a penalty not exceeding one<br>thousand rupees, and all<br>goods so discharged, shipped<br>or water borne shall be hable<br>to confiscation                                                                                                                                         |
| 29 — II, when a boat-note is required by section 76, any goods water borre for the purpose of being landed from any vessel, and ware housed or passed for unportation or of being shipped for exportation, be found without such note or if any goods are found on board any boat in excess of such boat-note, whether such goods are intended to be landed from, or to be shipped on board of, any vessel results.                                                    | 76                                                              | such goods shall be hable to<br>confiscation, and the person<br>by whose authority the goods<br>are being landed or shipped,<br>and the person in charge of<br>the beat shall each be liable<br>to a penalty not exceeding<br>twice the amount of duty (if<br>any) leviable on the said<br>goods                     |
| 30 — If any person refuses to receive, or fails to sign, or to note the prescribed particulars                                                                                                                                                                                                                                                                                                                                                                         | 76                                                              | such person, master or officer<br>shall be liable to a penalty<br>not exceeding five hundred<br>rupees                                                                                                                                                                                                               |
| Customs authorized to make such re quisition,                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                 |                                                                                                                                                                                                                                                                                                                      |
| 31 — If any gools are, without permission<br>shipped or water borne to be shipped or<br>are landed, except from or at a wharf or<br>other place duly appointed for the<br>purpose, or                                                                                                                                                                                                                                                                                  | 73                                                              | such goods shall be liable to confineation, and the person by whose authority the goods are shipped, landed waters are shipped, landed waters and the person me charge of the vet sel employed in conveying them, shall sea be liable on penalty not person, the smount of the duty (if any) leviable on such goods. |
| If any goods water borns for the purpose of bung handed or shapped are not landed or shapped without nuncessary delay, or if the boat containing such goods be found out of the proper track between the vessel and the what for other proper place of landing or shipping and such devastion be not accounted for to the astrastation be not accounted for to the astrastation of the proper shapped accounted for the satisfaction of the provisions of section 75d. | 77                                                              |                                                                                                                                                                                                                                                                                                                      |

## (Chapter XVI -Offences and Penalties)

| Offences                                                                                                                                                                                                                                                                                  | Section of<br>this Act to<br>which of-<br>fence has<br>reference | Penalties                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 32 — If, after the issue of a notification under<br>section 79 with regard to any port, any<br>goods are found within the limits of such<br>port on board of any boat not duly in<br>censed and registered,                                                                               | 79                                                               | such goods, unless they are<br>covered by a special permit<br>from the Customs collector,<br>shall be hable to confisca-<br>tion, and the owner or the<br>person in charge of the boat<br>shall be hable to a penalty<br>not exceeding one hundred<br>rupess                                                                                                                                                                   |
| 33 — If any master of a vessel discharges or<br>suffers to be discharged any goods not<br>duly entered in the manifest of such<br>vessel,                                                                                                                                                 | 55 & 82                                                          | such master shall be liable to<br>a penalty not exceeding one<br>thousand rupees.                                                                                                                                                                                                                                                                                                                                              |
| 34.—If any goods are found concealed in any<br>place, box or closed recoptacle in any res<br>sel, and are not duly accounted for to the<br>satisfaction of the officer in charge of the<br>custom house,                                                                                  | General .                                                        | such goods shall be hable to<br>confiscation                                                                                                                                                                                                                                                                                                                                                                                   |
| 35 —If any goods are found on board in excess<br>of those entered in the manifest, or not<br>corresponding with the specification<br>therein contained,                                                                                                                                   | 55 & 82                                                          | such goods shall be hable to<br>confiscation, or to be charged<br>with such increased rates of<br>duty as the Chief Officer of<br>Customs directs.                                                                                                                                                                                                                                                                             |
| 30 — If, after any goods have been landed and<br>before they have been passed through the<br>custom house, the owner removes or at-<br>tempts to remove them, with the inten-<br>tion of defrauding the revenue,                                                                          | 86 & 87                                                          | such goods shall be lable to confuscation, or all the goods cannot be recorded to the goods cannot be recorded to owner shall be hable, in addition to fall duty, to a penalty not exceeding two candidations of such duty, in the goods be dutable and the duty leviable thereon can be ascertained; or other wise to a penalty not exceeding one thousand rupees for every missing or deficient package or separate article. |
| 37—If the found, when any goods are unlevel<br>at the brought to be passed through<br>a custom house, either for importation or<br>expertation, that—<br>(a) the packages in which they are con<br>tained didfer widely from the description<br>given in the bill of entry or application | SG & 137                                                         | such packages together with<br>the shale of the goods con<br>tained therein, shall be lable<br>to confession, and<br>every person concerned in any<br>such effence shall be liable to<br>a penalty not exceeding one<br>thousand rupes.                                                                                                                                                                                        |

## (Chapter XVI -Offences and Penalties.)

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Offences                                                                                                                                                                                                                                                                                                                                                                                                    | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties,                                                                                                                                                                                                                                                                                      |
| 27—If the master of any vessel laid up by the withdrawal of the officer of Customs shall be fore application is made by him for an officer of Customs to supernitend the recept of cargo cause or suffer to be put on board of such vessel any goods whatever, in contravention of section 70,                                                                                                              | 70                                                              | such master shall be liable to<br>a penalty not exceeding one<br>thousand rupees and the<br>goods if protected by a pass<br>shall be liable to be re landed<br>for examination at the ex<br>pense of the vessel and, if<br>not protected by a pass,<br>shall be hable to confiscation.          |
| 28 — If any master of a vessel in any case other<br>than that provided for by No 27, causes<br>or suffers any goods to be discharged,<br>shipped or water borne contrary to any<br>of the provisions of section 70, 72 or 75,                                                                                                                                                                               | 70, 72 & 75                                                     | such master shall be liable to<br>a penalty not exceeding one<br>thousand rupees and all<br>goods so discharged shipped<br>or water borne shall be liable<br>to confiscation                                                                                                                    |
| 29—If when a boat notes required by section 7s, any pools water borns for the purpose of being landed from any vessel, and warehoused or passed for importation or of being shipped for exportation, be found without such note or if any goods are found on board any boat in excess of such boat-hote whether such goods are intended to be landed from, or to be shipped on board of, any vessel,        | 76                                                              | such goods shall be hable to<br>confiscation and the person<br>by whose authority the goods<br>are being landed or shipped,<br>and the person in charge of<br>the beat shall each be liable<br>to a pensity not exceeding<br>twice the amount of duty (if<br>any) leviable on the said<br>goods |
| 30 — If any person refuses to receive, or fails to sign or to note the presenthed particular upon any boat-note as required by ecc toon 76, or if any master or offerer of a see le receiving the same fails to deliver it when required so to do by any officer of Customs authorized to make such requisitions.                                                                                           | 76                                                              | such person, master or officer<br>shall be hable to a penalty<br>not exceeding five hundred<br>rupees                                                                                                                                                                                           |
| 31 If any gools are without permission<br>shipped or water borne to be shipped, or<br>are landed except from or at a wharf or<br>other place duly appointed for the<br>purpose, or                                                                                                                                                                                                                          | 73                                                              | such goods shall be liable to<br>confiscation and the person<br>by whose authority the goods<br>are shipped landed, water<br>borne or transhipped and<br>the person in charge of the ves                                                                                                        |
| If any goods water borne for the purpose of<br>brung landed or shapped are not landed or<br>shapped without tunnecessary delay, or<br>if the boat containing such goods be found<br>out of the proper track between the ves<br>sel and the what for other proper place of<br>landing or shipping and such deviation<br>be not accounted for to the satisfaction<br>be not accounted for to the satisfaction | 77                                                              | sel employed in conveying<br>them shall each be liable to a<br>penalty not exceeding twee<br>the amount of the duty (if<br>any) leviable on such goods.                                                                                                                                         |
| of the Customs collector, or<br>if any goods are transhipped contrary to the<br>provisions of section 78,                                                                                                                                                                                                                                                                                                   | 78                                                              |                                                                                                                                                                                                                                                                                                 |

## (Chapter XVI -Offences and Penalties )

| Offences                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Section of<br>this Act to<br>which of-<br>fence has<br>reference | Penalties.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
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| 32 — If after the issue of a notification under<br>section 73 with regard to any port, any<br>goods are found within the limits of such<br>port on board of any boat not duly h<br>censed and registered,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 79                                                               | such goods, unless they are<br>covered by a special permit<br>from the Customs collector,<br>shall be liable to confisca-<br>tion, and the owner or the<br>person in charge of the beat<br>shall be liable to a penalty<br>not exceeding one hundred<br>rupees                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |
| 33 —If any master of a vessel discharges or<br>suffers to be discharged any goods not<br>duly entered in the manifest of such<br>vessel,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 55 & 62                                                          | such master shall be liable to<br>a penalty not exceeding one<br>thousand rupees                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |  |
| 34.—If any goods are found concealed in any<br>place, box or closed receptacle in any ves<br>sel, and are not duly accounted for to the<br>satisfaction of the officer in charge of the<br>custom house,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | General .                                                        | such goods shall be liable to<br>confiscation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |
| 35 —If any goods are found on board in excess<br>of those entered in the manifest, or not<br>corresponding with the specification<br>therein contained,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | KK \$- Q0                                                        | Customs directs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |  |
| 36 — If, after any goods have been landed and before they have been passed through the custom house, the owner removes or at tempts to remove them, with the intention of defrauding the revenue,  37 — If it be found, when any goods are entered at, or brought to be passed through, a cut brough to be passed through, and cut brough the passed through, and cut brough the passed through the p | 80 & 87<br>-<br>-<br>50 & 137                                    | such goods shall be liable to confiscation, or if the goods cannot be recovered the owner shall be liable, in addition to full duty, to a penalty not exceeding twee the amount of such duty, if the duty level dutable and the secretained; or otherwise to a penalty not exceeding one thousand rupees for every missing or deficient such packages together with the whole of the goods contained therein, shall be hable to confiscation, and every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees. |  |  |
| such goods are chargeshie with duty, or are being imported or exported, or                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | '                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |

## (Chapter XVI.-Offences and Penalties)

| Offences                                                                                                                                                                                                                                                                                                                                                                                                  | Section of<br>this Act to<br>which of<br>fence has<br>reference |                                                                                                                                                                                                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (c) the contents of such packages have been mis stated in regard to sort, quality, quantity or value, or (d) goods not stated in the bill of entry or spilication have been concealed m, or mixed with, the articles specified therein, or have apparently been packed so as to deceive the officers of Customs, and such circumstance is not accounted for to the satisfaction of the customs collector. |                                                                 |                                                                                                                                                                                                                                                                                                                                              |
| 38—If, when goods are passed by tale or by package any omussion or mindescription thereof tending to injure the revenue be discovered,                                                                                                                                                                                                                                                                    | 86 % 94                                                         | the person guilty of such omas<br>sion or madescription shall<br>be lable to a penalty not ex-<br>ception of duty which might have<br>been lost to Government by<br>such omission or misde<br>scription, unless it be proved<br>to the satisfaction of the<br>officer in charge of the<br>custom house that the vari-<br>ance was accidental |
| 39 — If, without entry duly made, any goods are<br>taken or passed out of any custom house<br>or wharf,                                                                                                                                                                                                                                                                                                   | 86                                                              | the person so taking or pass<br>ing such goods shall, in every<br>such case, be liable to a<br>penalty not expeding five<br>hundred rupees and such<br>goods shall be liable to con<br>fiscation.                                                                                                                                            |
| 40 — If any prohibited or dutiable goods are<br>found, either before or after landing,<br>concealed in any passenger s baggage,                                                                                                                                                                                                                                                                           | General                                                         | such passenger shall be hable<br>to a penalty not exceeding<br>five hundred rupees and<br>such goods shall be hable to                                                                                                                                                                                                                       |
| 41—If any goods entered to be warehoused are carried into the warehouse unless with the authority, or under the care of the proper officers of Customs, and in such manner, by such persons, within such time, and by such roads or ways, as such officers durcet.                                                                                                                                        | 93                                                              | confiscation. such goods shall be liable to confiscation, and any person so carrying them shall be liable to a penalty not ex ceeding one thousand rupees.                                                                                                                                                                                   |
| 42 — If any goods entered to be warehoused are not duly warehoused in pursance of such entry, or are withheld, or removed from any proper place of examination before they have been examined and certified by the proper officer.                                                                                                                                                                        | 94                                                              | such goods shall be deemed<br>not to have been duly ware<br>housed, and shall be liable to<br>confiscation                                                                                                                                                                                                                                   |
| 43 —If any warehoused goods be not ware housed in accordance with sections 94 and 93,                                                                                                                                                                                                                                                                                                                     | 94 & 93                                                         | such goods shall be liable to confiscation.                                                                                                                                                                                                                                                                                                  |

## (Chapter XVI .- Offences and Penalties )

| Offences                                                                                                                                                                                                                                                                                                                                                                                  | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 44 —If the licensee of any private warehouse heeneed under this Act does not open the                                                                                                                                                                                                                                                                                                     | 97                                                              | such licenses shall be hable to<br>a penalty not exceeding one<br>thousand rupees, and shall<br>further be hable to have his<br>license forthwith cancelled.                                                          |
| 45 — If the keeper of any public warehouse, or<br>the heensee of any private warehouse,<br>neglects to stow the goods warehoused<br>therein so that easy access may be had<br>to every package and pricel thereof,                                                                                                                                                                        | Chap XI                                                         | such keeper or licensee shall,<br>for every such neglect, be lia<br>ble to a penalty not exceed-<br>ing fifty rupees                                                                                                  |
| 46 — If the owner of any warehoused goods, or<br>any person in the employ of such owner,<br>clandestinely of ens any warehouse, or,<br>except in presence of the proper officer of<br>Customs, guins access to his goods,                                                                                                                                                                 | 99                                                              | such owner or person shall, in<br>every such case, be liable to a<br>penalty not exceeding one<br>thousand rupees                                                                                                     |
| 47 — If any warehoused goods are opened in con<br>travention of the provisions of section 98,<br>or<br>if any alteration be made in sight goods or<br>in the packing thereof, except as pro-<br>vided in section 100,                                                                                                                                                                     | 98 & 100                                                        | such goods shall be hable to<br>conficcation                                                                                                                                                                          |
| 48 — If any goods lodged in a retrate warehouse<br>are found at the time of delivery there<br>from to the deficient, and such deficiency<br>sallowed under sections 116 and 117,<br>allowed under sections 116 and 117,                                                                                                                                                                   | 123                                                             | the hoensee of such warehouse shall, unless the deficiency be accounted for to the satisfaction of the Customs collector, be hable to a nenalty equal to five times the duta chargeable on the goods so deficient.    |
| 49—II the keeper of any public warehouse, or<br>the licensee of any private varehouse,<br>fails, on the requisition of any officer of<br>Customs, to produce any goods which<br>have been deposited in such warehouse,<br>and which have not been duly eleved<br>and delivered timerfrom, and is unable to<br>account for such failure to the satisfac-<br>tion of the Customs collector, | 123                                                             | such keeper or heensee shall, for every such failure, be ha-<br>ble to pay the dutus due on such goods, and also a penalty not exceeding fifty rupees in respect of every package or parcel so investig or deficient. |
| 50 — If any goods, after being duly warehoused, are Iraudulently concessed in, or removed from, the warehouse, or a batracted from any prehape, or transferred from one package to another, or otherwise, for the purpose of illegal removal or concesiment.                                                                                                                              | Chaf ZI                                                         | such goods shall be hable to<br>confiscation, and any jersen<br>concerned in any such offence<br>shall be hable to a penalty<br>not exceeding one thousand<br>rupees                                                  |

## (Chapter XVI -- Offences and Penalties)

| Offences                                                                                                                                                                                                        | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties.  such excess unless accounted for to the satisfaction of the officer in charge of the custom house whall be charged with fire times the ordinary duty thereon such goods shall be liable to conficeation and any person such as the conficeation and any person penalty of the conficeation and any person penalty to a greatly not exceeding one thousand rupes |  |  |
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| 51 —If any goods lodged in a private warehouse<br>are found to exceel the registered quan<br>tity                                                                                                               | Chap XI                                                         |                                                                                                                                                                                                                                                                                                                                                                             |  |  |
| 5° — If any goods be removed from the ware house in which they were originally de posted, exc it in the presence, of with the sanction of the Iroper officer, or under the proper authority for their de livery | Ditto                                                           |                                                                                                                                                                                                                                                                                                                                                                             |  |  |
| 53 —If any person illegally takes any goods out<br>of any warchouse without payment of<br>duty or aids assists or is concerned<br>therein                                                                       | Ditto                                                           | such person shall be hable to a<br>penalty not exceeding one<br>thousand rupees                                                                                                                                                                                                                                                                                             |  |  |
| 54 —I' any person contravenes any rule regard<br>ing the process of transhipment made by<br>the Local Government, or                                                                                            | 130                                                             | such person shall be hable to a<br>renalty not exceeding one<br>thousand rupees, and any                                                                                                                                                                                                                                                                                    |  |  |
| any prohibition or order relating to tran<br>shipment notified by the Governor Gen-<br>eral in Coun il or<br>tranships goods not allowed to be tran<br>shipped,                                                 | 134                                                             | goods in respect of which<br>such offence has been com-<br>mitted shall be hable to con-<br>fiscation.                                                                                                                                                                                                                                                                      |  |  |
| 5 —If any goods be taken on board of any ves-<br>el at any customs portin contravention<br>of section 136                                                                                                       | 136                                                             | the master of such vessel shall<br>be hable to a penalty not<br>exceeding one thousand<br>rupees                                                                                                                                                                                                                                                                            |  |  |
| 56 — If any goods not specified in a duly passed<br>shipping bill are taken on board of any<br>ressel, contrary to the provisions of sec<br>two 337                                                             | 137                                                             | the master of such vessel shall<br>be halle to a penalty not<br>exceeding fifty rupees for<br>every package of such goods                                                                                                                                                                                                                                                   |  |  |
| 57 — If any goods specified in the manifest of any vessel, or in any shipping bill, are not                                                                                                                     | 140                                                             | the owner of such goods shall<br>be hable to a penalty not ex<br>ceeding one hundred rupees,<br>and such goods shall be hable<br>to confiscation                                                                                                                                                                                                                            |  |  |
| 58 — If any goods duly shipped on board of any<br>vessel to landed except noder section 141,<br>14° or 143 at any jaice other than that<br>for which they have been cleared.                                    | 141                                                             | the master of such vessel shall unless the landing be accounted for to the satisfaction of the Customs-collector be liable to a penalty not exceeding three times the value of such goods so land ed                                                                                                                                                                        |  |  |

## (Chapter XVI -- Offences and Penalties ) .

| Offences                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |
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| 59 — If any goods on account of which drawback<br>has been paid be not found on hoard of<br>any vessel referred to in section 142,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 1[142]                                                          | 1[14.2] the master of such yeasel she be lable to a penalty note; ceding the entire value such goods unless the fu- be recounted for to the sate faction of the Custom see lector                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |
| 60 — If any person without a special pass from<br>an officer of Excise at the place of export<br>ation, relands or attempts to reland any<br>spirit shipped for exportation,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 154                                                             | such person shall be hable to a<br>penalty not exceeding five<br>hundred rupees                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |
| <ol> <li>If any person wilfully contravenes any rule<br/>relating to spirits made under section 155,</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 155                                                             | such person shall be liable to a<br>penalty not exceeding five<br>hundred rupees;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                 | and all such spirit shall be<br>hable to confiscation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
| 62 — If, in contravention of any rules made<br>under section 157, any goods are taken<br>into, or put out of, or carried in any<br>coasting vessel, or if any such rules be<br>otherwise infringed,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 157                                                             | the master of such vessel shall<br>be liable to a penalty not ex<br>ceeding one thousand rupees.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |
| 63—II, contrary to any such rules, any coasting vessel touches at any foreign port, or deviates from her voyage, unless forced by unavoidable circumstances, or if the master of any such vessel which has touched at a foreign port fails to declare the contract of the c | -                                                               | the master of such vessel shalt be lable to a penalty not ex- ceding one thousand rupees, and if any goods lable to the control of the contro |  |
| 64 —If in the case of any coasting vessel any of<br>the provisions of section 108, 159 or 160<br>are not complied with,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 158, 159 &<br>160                                               | the master of such vessel shall<br>in each such case be liable<br>to a penalty not exceeding<br>five hundred rupees.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |

<sup>-</sup> Auctso against were substituted for the figures " 141 " by the Repealing and Amending Act, 1891 (XII of 1891) General Acts, Vol. IV

# (Chapter A VI -Offences and Penalties)

| Offences                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties,                                                                                                                                                                                                                           |
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| 65 -If the person executing any bond given<br>under section 101 fail to produce the cert<br>theate mentioned in the same section or<br>to show sufficient reason for its non pro-<br>duction,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 161                                                             | such person shall be bound to<br>pay a penalty equal to double<br>the amount of customs<br>duties which would have beer<br>chargeable on the export-<br>cargo of the vevel had she<br>been declared to be bound to<br>a foreign jort |
| 66.—If then aster of any coasting ve sel violates<br>any of the conditions under which a gene-<br>ral pass for such vessel has been granted                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 164                                                             | such master shall be hable to's<br>penalty not exceeding one<br>thousand rupers.                                                                                                                                                     |
| 67 —If any n aster of a coasting vessel contra<br>venes any of the provisions of section 165,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 16ა                                                             | such master shall be liable to a<br>penalta not exceeding five<br>hundred rupees.                                                                                                                                                    |
| 68—If upon examination any package entered<br>in the cargo-book required I v section 150,<br>as continuing duivalle goods, is found<br>not to contain such goods, or<br>Nany package is found to contain duitable<br>goods not entered or not entered as such<br>in such book                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 615                                                             | such package, with its con<br>tents shall be hable to confis-<br>cation.                                                                                                                                                             |
| C9—If the master of any coasting vessel required under section 16x to keep a cargo book fails correctly to keep or to cause to le kept such book or to produce the same on demand or if at any time there I efound on board of any such ye ed any goods not entered in such book as luden or any goods noted as delivered, or if any goods entered as luden and not noted as delivered be not on board.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 165                                                             | such master shall be libble to a<br>penulty not exceeding fire<br>hundred rupees,                                                                                                                                                    |
| 70. —If contrary to the proressions of this or any other law for the time being in f reversiting to the Customs any goods are lait en on board of any vessel in any customs port and curried coastwies or of if any goods which have been brought coast wise are so unlaid in any such port of any custom and the custom of the c | Chap. VI                                                        | such goods shall be liable to<br>conficcation and the master<br>of such vessel shall be liable<br>to a penalty not exceeding<br>five hundred rupees.                                                                                 |
| 71 —If the master of any coasting vessel refuses<br>to bring any document to the Customs<br>collector when so required under section<br>160                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 166                                                             | such master shall be liable to<br>a penalty not exceeding two<br>hundred rupees.                                                                                                                                                     |

## (Chapter XVI -Offences and Penalties ;

| Offences                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties                                                                                                                                               |
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| 72—If any person makes or sages, or uses any declaration or document used in the transaction of any business relating to the Customs, knowing such declaration or document to be false in any particular, or counterfeits, falsafies or fraudeleatly alliers or destroys any such document, or any sea in the state of the season of | General                                                         | such person shall onconviction<br>of any such offence before a<br>Magnistrate, be liable to<br>a fine not exceeding one thou<br>sand rupces             |
| 73 If any person on board of any vessel or boat in any customs port, or who has                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Ditto                                                           | such goods shall be hable to<br>confiscation, and such per-<br>son shall be hable to a<br>penalty not exceeding three<br>times the value of such goods. |
| that he has not, and if any such goods<br>are, after such denial, found about his<br>person or in his possession,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                 |                                                                                                                                                         |
| 74.—If any officer of Customs require any person to be searched for dutable or probability of the search of the se | 169                                                             | such officer shall, on conviction<br>before a Magistrate, be liable<br>to a fine not exceeding five<br>hundred rupees.                                  |
| 75 — If any officer of Customs or other person duly employed for the prevention of smug ging is guity of a within breach of the provisions of this Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | General                                                         | such officer or person shall, on<br>convection before a<br>Magistrate, be liable to<br>simple impresonment for any<br>term not exceeding two years,     |
| 70 — If any officer of Customs, or other person duly employed for the prevention of smuggling, practises, or attempts to practise, any fraud for the purpose of injuring the customs revenie, or abets or consures at any such fraud, or any at tempt to practise any such fraud.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Ditto .                                                         | or to fine, or to both.  Ditto ditto.                                                                                                                   |
| 77—If any Police officer, whose duty it is un<br>der section ISO to send a written notice<br>or cause goods to be conveyed to a cus-<br>tom house, neglects so to do,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 150                                                             | such officer shall, on convic-<br>tion before a Magistrate, be<br>hable to a penalty not ex-<br>ceeding one hundred rupees.                             |

(Chapter XVI -Offences and Penalties Chapter XVII -Procedure relatingto Offences Appeals etc.)

| Offences                                                                                                                                                                                                    | Section of<br>this Act to<br>which of<br>fence has<br>reference | Penalties                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 78 —If any person intentionally obstructs any officer of Customs or other person duly employed for the prevention of imaggling in the exercise of any powers given under this Act to such officer or person | beneral                                                         | such person shall on conviction before a Magistrate be liable to imprisonment for any term not exceeding six months or to a fine not exceeding one thousand rupees, or to both |
| 79 — If any officer of Customs except in the ducharge in good faith of his duty as such officer disclose any pertuculars learned by him no his office operatory in respect of any goods or shows any sam    | 195                                                             | he shall be liable to a penalty<br>not exceeding one thousand:<br>rupees                                                                                                       |
| cial capacity                                                                                                                                                                                               |                                                                 |                                                                                                                                                                                |
| 80 — If any person without the approval of the<br>Customs collector under section 202 acts<br>as an agent for the transaction of busi<br>ness as therein mentioned                                          | 202                                                             | such person shall be liable to a<br>penalty not exceeding five-<br>hundred rupees                                                                                              |

Nothing in the second column of the above schedule shall be deemed to have the force of

Packages
an I contents
included in
confiscation
of goods
theo con
revances and
anin als used
in removal.
Tackle etc
include I in
confiscation

of vessels.

168 The confiscation of any goods under this Act includes any package in which they are found, and all the other contents thereof

Every vessel, cart or other means of conveyance, and every horse or ther animal, used in the removal of any goods hable to confiscation under this Act shall in like manner be hable to confiscation

The confiscation of any vessel under this Act includes her tackle, appired and furniture

### CHAPTER XVIII

PROCEDURE RELATING TO OFFENCES, APPEALS, FTC

Power to

of the Act Ceneral Acts Vol VI

169 Any officer of Customs duly employed in the prevention of smuggling

The powers conferred on officers of Customs ander this Chapter may be exercised by them for the prevention of offences under the In han I migration Act 1708 (AMI of 1908) are 8, 90

(Chapter XVII -Procedure relating to Offences, 1 preals etc.)

may search any person on board of any vessel in any port in British India or any person who has landed from any vessel

search on reasonable suspicion

Provided that such officer has reason to believe that such person has duti able or prohibited goods secreted about his person

170 When any officer of Customs is about to search any person under the Persons may provisions of section 169, such person may require the said officer to take him previous to search before the nearest Magistrate or Customs collector

before search require to be tal en before Mag strate or Customs

If such requisition be made, the officer of Customs may detain the person making it until he can bring him lefore the nearest Magistrate or Customs, collector collector

A The Magistrate or Customs collector before whom any person is so brought shall, if he see no reasonable ground for search, forthwith discharge such per son , but, if otherwise, shall direct that the search be made

A female shall not be searched by any but a female

171 Any duly empowered officer of Customs or other person duly em ploved for the prevention of smuggling may stop and search for smuggled goods any vessel, cart or other means of conveyance Provided that he has search for reason to believe that smuggled goods are contained therein

Poner to stop vessels carts. and no shoon reasonable

172 Any Magistrate may, on application by a Customs collector, stating Power to his belief that dutiable or prohibited goods are secreted in any place within the warrants local limits of the jurisdiction of such Wagistrate, issue a warrant to search for such goods

2013! ICTOD 18que search

Such warrant slall be executed in the same way, and shall have the same effect as a search warrant issued under the law relating to Criminal Procedura 1

173 Any person against whom a reasonable suspicion exists that he has Persons been guilty of an offence under this Act may be arrested in any place, either reasonably upon land or water, by any officer of Customs or other person duly employed may be for the prevention of smuggling

arrested

arrested to

174 Every person arrested on the ground that he has been guilty of an Persons offence under this Act shall forthwith be tal en before the nearest Magistrate or Customs collector

be taken to nearest Magistrate or Customs-col lector taken before

175 When any such person is tal en before e Magistrate, such Magistrate Persons may, if he thinks fit either commit him to gaol or order him to be kept in the Magnitation custody of the Police for such time as is necessary to enable suc i Magistrate may be de to communicate with the proper officers of Customs tained or admitted to

\*Provided that any person so arrested committed or kept shall be released bail security to the satisfaction of the Magistrate to appear at such time as such Visgistrate appoints in this behalf

(Chapter AVII - Procedure relating to Offences, Appeals, etc.)

Person escap ing may be afterwards arrested 176 If any person hable to be arrested under this Act is not arrested at the time of committing the offence for which he is so hable, or after arrest make his escape, he may at any time afterwards be arrested and taken before a Magistrate, to be dealt with as if he had been arrested at the time of committing such offence

177 When any person employed on the crew of any of the ships of Her

Persons in Her Majesty's Navy, when ar rested to be secured on board until warrant procured

Majesty's Navy, Indian Marine or Manne Survey, is arrested under this Act, the arresting officer shall forthwith give notice thereof to the commanding officer of the ship who shall thereupon place such person in security on board of such ship until the arresting officer has obtained a warrant from a Magistrate for bringing up such person to be deelt with according to law. The Magistrate shall grant such warrant upon complaint made to him by the arresting officer stating the offence for which the person is detained

warrant
procured.

Seizure of
things liable

178 Any things hable to confiscation under this tot may be seized in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of snuggling
179 All things seized on the ground that they are hable to confiscation under this Act shall as soon as conveniently may be, be delivered into the

Seizure of things liable to confisca tion Things seized how dealt with

under this Act shall as soon as conveniently may be, be delivered into the care of any Cutsfurs officer authorized to receive the same If there be no such officer at hand all such things shall be carried to and

If the deposited

deposited at the custom house nearest to the place of seizire

If there be no custom-house within a convenient distance, such things shall be deposited at the nearest place appointed by the Chief Customs-

Procedure in resp et of things setzed on suspection

authority for the deposit of things so seized

180 When any things liable to confiscation under this Act are seized by
any Police officer on suspicion that they have been stolen, he may carry them
to any police station or Court at which a complaint connected with the stealing or recurving of such things has been made, or an enquiry connected with
such stealing or receiving is in progress, and there detain such things until the
dismissal of such complaint or the conclusion of such enquiry or of any trial

Aljudrati n

there resulting

In every such case the Police officer seizing the things shall send written notice of their seizure and detention to the nearest custom-house, and immediately after the dismussil of the complaint or the conclusion of the enquiry or trial he shall cause such things to be convered to, and deposited at, the nearest custom house, to be there proceeded against according to law.

181. When anything is seized, or any person is arrested under this Act.

When a 12 ire or i frat is made, ir so in writing to be given.

the officer or other person making such seizure or arrest shall, on demand of the person in charge of the thing so seized, or of the person so arrested, give him a statement in writing of the reason for such seizure or arrest 182 In every case, except the cases mentioned in section 167, Nos. 26,

162 In every case, except the cases monitoned in section 161, 108 29,
18ex : if catt a toped under this section see Pombay Covernment Gazette, 1903, Pt. I.

p. 1321 . it rma t trette 1908 Pr. 1 p. 701

(Chapter XVII -Procedure relating to Offences, Appeals, etc.)

72 and 74 to 76, both inclusive, in which, under this Act, anything is hable of confiscito confiscation or to increased rates of duty.

penalties

or any person is hable to penalty,

such confiscation, increased rate of duty or penalty may be adjudged-

- (a) without limit, by a Deputy Commissioner or Deputy Collector of Customs, or a Customs collector.
- (b) up to confiscation of goods not exceeding two hundred and fifty rupees in value, and imposition of penalty or increased duty not exceeding one hundred rupees, by an Assistant Commissioner or Assistant Collector of customs.
- (c) up to confiscation of goods not exceeding fifty rupees in value, and imposition of penalty or increased duty not exceeding ten rupees, by such other subordinate officers of Customs as the I ocal Government may, from time to time, empower in that bel alf in virtue of their office

Provided that the I ocal Government may, in the case of any officer performing the duties of a Customs collector, limit his powers to those indicated in clause (b) or in clause (c) of this section, and may confer on any officer, by name or in a rane of his office, the powers indicated in clauses (a). (1) or (c) of this section

183 Whenever confiscation is authorized by this let the officer adjudge Oction to ing it shall give the owner of the goods an option to pay in heu of confiscation has fine in such fine as the officer thinks fit

184 When anything is confiscated under section 182, such thing shall on confisthereupon vest in Her Majesty

The officer adjudging confiscation shall take and hold possession of the in Her thing confiscated, and every officer of Police, on the requisition of such officer, Majesty shall assist bim in tal ing and holding such possession

185 If any vessel actually departs without a port clearence, or after fail Levy of ing to bring to when required at any station appointed under section 17, the fulure to penalty to which the master of such vessel is hable may be adjudged by the bring to Chief Customs officer of any customs-port to which such vessel proceeds, or in which she is, and, in the case of iden, by such officer as the Governor of Bombay in Council appoints in this behalf

A certificate of such departure or failure to bring to when required, purporting to be signed by the Chief Customs officer of the port from which the vessel is stated to have so departed, shall be prima facte proof of the fact so certified

186. The award of any confiscation, penalty or men used rate of duty under Penalty this let by an officer of Customs shall not prevent the inflict or of ary under Act punishment to which the person affected thereby is hable under ray other free with lan

punishment under other (Chapter AIII -Procedure relating to Offences, Appeals, etc.)

specially provided for how tried Appeal fr m subordinato to Chief Customs authority

Offences not

187 All oftences against this Act, other than those cognizable under section 182 by officers of Customs, may be tried summarily by a Magistrate

188 Any person deerang himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs authority, or in such cases as the Local Government directs, to any officer of finishms not inferior in rank to a Customs collector and empowered in that behalf by name or in vitue of his office by the focal Government the

Such authority or officer may thereupon make such further enquiry and pass such order as he ti make fit confirming altering or annulling the decision or order appealed against

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation penalty or rate of duty than has been adjudged against him in the original decision or order

Livery crider passed in appeal under this section shall subject to the power of revision conferred by section 191, be final

Deposit produce ap peal of duty demanded 189 Where the decision or order appealed against relates to any duty or penalty lexiable in respect of any goods the owner of since goods, it desirous of appealing against such decision or order, shall pending the appeal, deposit in the hinds of the Customs collector at the port where the dispute arises the amount dema ided by the officer passing such decision or order

When delivery of such goods of the owner thereof is withheld merely by reason of such an ount not being paid, the Customs collector shall upon such deposit being made cause such goods to be delivered to such owner

If upon ny such appeal it is decided that the whole or any portion of such amount wa not leviable in respect of such goods the Customs collector shall return such amount or portion (as the case may be) to the owner of such goods on demand by such owner.

Power to reach penalty or confises tion

190 If upon consideration of the circumstances ander which any penalty in reased rate of duty or confiscation has been adjudged under this bethe yain officer of Customs the Chief Customs authority is of opinion that such penalty increased rate or confiscation ought to be remitted in whole or in part, or commuted, such authority may renat the same of any portion thereof, or may, with he consent of the owner of any goods ordered to be confiscated commute the or er of confiscation to a penalty not exceeding the value of such goods.

Regisson by 191 The I ocal Government may, on the application of any person aglocal Cov general it any decision or order passed under this Act by any officer of Cus

<sup>1</sup> For theres appointed under a ISS by the Covernment of Bombay are Bonday Government Carette 185' Pt I p 717 and 1857 Pt I p 317 and 1857 Pt I p 8"8, and and 1857 Pt I p 20"

Sea Customs (Chapter XVII -Procedure relating to Offences Appeals, etc Chapter XVIII -Miscellaneous)

toms or Chief Customs authority, and from which no appeal lies reverse or modify such decision or order 192 When any fine penalty or increased rate of duty is leviable under

this Act the goods in respect of which such fine peralty or rate is leve ble shall not be removed by the owner until such fine penalty or rate is paid If any rersor has become hable to any such fine penalty or rate in respect of any goods the (ustoms collector may detain any other goods belonging to hable to fine

penalty in curred not to be removed till payment. Other goods or penalty may be detained

Goods on which

n h person pas me through the custom house until such fine, penalty or rate is na d 193 When a penalty or increased rate of duty is adjudged against any Enforcement of payment person unger this Act by any officer of Customs such officer if such penalty of penalty

or increased rate be not paid may levy the same by sale of any goods of the said person which may be in his charge or in the charge of any other officer of Customs

When an officer of Customs who has adjudged a penalty or increased rate 1 41 1 4

ing to him may be the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered, and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself

### CHAPLER XVIII

#### MISCELIANECE

194 Any officer of Customs may open any package and examine any goods Power to brought by sea to or shipped or brought for shipment at any customs port open pack

ares and ex 195 The Customs collector may on the entry or clearance of any goods amine goods. Power to take or at any time while such goods are being passed through the custom house, samples of roods.

take sample of such goods for examination or for ascertaining the value there of on which duties are payable, or for any other necessary purpose Every such sample shall if practical le be at the option of the owrer either

restored to him or sold and the proceeds accounted for to him

196 The unshipping carry no shipping and landing of all goods, and the bringing of them to the proper place for examination or weight g

and the nutting of them into and out of the scales and the opening unpack ing bulking sorting lotting na rking and numbering of g ods where such operations are necessary or permitted

Owner to pay expense incl. dental to complance with Cortoms-law

### (Chapter XVIII -Miscellancous)

and the removing of goods to, and the placing of them in, the proper place of deposit.

shill be performed by or at the expense of the owner of such goods

197 No owner of goods shall be entitled to claim from any officer of Customs No compen sation for loss compensation for any loss or damage occurring to such goods at any time while or injury ex they remain or are lawfully detuned in any custom house, or on any customcept on proof of neglect or Wilful act house wharf or under charge of any other of Customs, unless it be proved that such loss or daninge was occusioned by the neglect or wilful act of such officer of Customs

Notice of pro 198 No proceeding other than a suit shall be commenced against any person for anything purporting to be done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended pro-

ceeding and of the cause thereof, or

Limitation after the expiration of three mouths from the accrual of such cause 199 The Chief ( ustoms authority may from time to time fix the period Il harfage

after the expiration of which goods left on any custom house wharf, or other authorized linding place or part of the custom house premises, shall be subject to payment of fees and the amount of such fees 1

200 A duplicate of any certificate, manifest, bill or other custom house Duplicates of document may, on payment of a fee not exceeding ten rupees, be furnished, at the discretion of the Custom, collector to any p rson applying for the same, if the Customs collector is satisfied that no fraud has been committed or is intended by the applicant

201 Except in the cases provided for by sections 36, 55, 63 and 94, the Customs collector may in his dis retion, upon payment of one rupce, authorize any document after it has been entered and recorded in the custom house

to be amended 202 No person authorized to net as an agent for the transact on of any house agents business relating to the entrance or clearance of any vessel or the import or export of goods or buggage shall so act in any custom house unless such au-

thorization is approved by the Customs collector Such officer new require any person so authorized to give a bond with sufficient security in any sum not exceeding five thousand rupees for his faithful behaviour as regards the custom house regulations and officers

Such officer may in case of nusbehaviour of the person so suthorized sus pend or withdraw such approval, but an appeal against every such suspension or withdrawal shall he to the Chief Custon's authority, whose decision thereon shall be final

Every appeal under this section shall be made within one month of the suspension or withdrawil

ccedings.

feet

documents

payment of

Amendment

of docu

Custom

ments.

may be eranted on

<sup>1</sup> For orders fixing such fees in— (1) Bombay, see Bom. R and O (2) Madras, see Mad. P and O

(Chapter XVIII - Miscellaneous)

203 When any person applies to any officer of Customs for permission Agent to proto transact any specified business with him on behalf of any other person such ity if re officer may require the applicant to produce a written authority from the person quired on whose behalf such business is to be transacted and in default of the production of such authority may refuse such permission

notified.

The clerk servant or agent of any person or mercantile firm may transact business generally at the custom house on behalf of such person or firm Provided that the Customs collector may refuse to recognize such clerk servant or agent unless such person or a member of such firm identifies such clerl servant or agent to the Customs collector as empowered to transact such busi ness and deposits with the Customs collector an authority in writing duly signed authorizing such clerk servant or agent to transact such business on hehalf of such person or firm

204 All rules n ade under this Act shall be notified in the official Gazette Pules to be and shall thereupon have the force of law

All such rules for the time being in force shall be collected arranged and published at intervals not exceeding two years and shall be sold to the public at a reasonable price

205 Any notification made by any authority under powers conferred by Cancellation this Act may be cancelled" in lil e manner by the same authority of notifies.

206 If in any case relating to the removal of goods from a warehouse with Remission of out payment of duty the person offending be an officer of Customs not acting duty and in execution of his duty and be prosecuted to conviction by the owner of such to owner in goods no duty shall be payable in respect of such goods. For any damage certain cases, so occasioned by such officer the Customs collector shall, with the sanction of the Chief Customs authority make due compensation to such owner

207 Nothing in this Act shall affect any laws for the time being in force Saving of relating to the Commissioners for maling improvements in the Port of Calcutta Port

1 For compilations published as directed by ill section by-

(1) Bengal ee rules under the Act corrected up to 31st Decen ber 190° published under the author ty of the Board of Revenue Calcutta Gazette 1903 Pt I p 303 and

rected up to 31st December 1899

(5) Madras e rules under the Act corrected up to April 190°
(5) Madras e rules under the Section in (1) Bergal see Ben. R. and O (2) Madras see Mad R and O Fort St George Gazette 1906 Pt I p. 1°23 and Gazette of India, 1908 Pt. I p.

See the Madras Port Tru t Act 1905 (Mad II of 190a)

1886) and the \den Port Trust Act 1889

(Ben, Act IV of ISS7) B. n. Code E.

tle Calc tta lort 4ct 1890 (Pem III of 1890) Ben Cede and the Pangoon Pert Act 1905 (Bur It of 1903) Bur Code

(Schedule -Part I .- Acts repealed )

Commissioners' and Bombay Port Trust Acts.

Calcutta or the Trustees of the Port of Bombay 1 [or any like body hereafter created for any other port]

#### SCHEDULE

PART I
Acts of the Governor General of India in Council.

| Number and y | ear. |   | Litle                                                                                                                     | Extent of repeal                                                                                                       |
|--------------|------|---|---------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| XXI of 1856  |      | • | An Act to convolidate and smend the law<br>relating to the Abkari Revenue in the Pre<br>sidency of Fort William in Bengal | Section S Sections 10 to 15. both inclusive the list sentence of section 16 and the form of bond in- nexed to the 4ct. |
| VI of 1863 . | ٠    |   | An Act to consolidate and amend the laws<br>relating to the administration of the De<br>partment of Sea Customs in India  | The whole                                                                                                              |
| X of 1868 .  | ٠    |   | An Act to amend the Consolidated Customs Act                                                                              | The whole                                                                                                              |
| XVII of 1869 |      |   | An Act to shorten the time for landing cargo                                                                              | The whole                                                                                                              |
| XIV of 1871  |      |   | An Act for the further amendment of the<br>Consolidated Customs Act                                                       | The whole                                                                                                              |
| VI of 1873 . |      | • | An Act to amend the law relating to the transhipment of goods imported by steamer, and for other purposes                 | The whole                                                                                                              |
| XVI of 1875  | •    | • | An Act to amend the law relating to Customs<br>duties, and for other purposes                                             | Sections 5, 6, 7 and 12                                                                                                |

<sup>1</sup> These wo ds were substituted for the word "respectively" by the Excise and Sea Customs Law Amendment Act, 1885 (IX of 1885), s 6, General Acts, Vol III

1878: Act VIII.7

(Schedule -Part II -Forms )

PAPT II

FORMS

FORM OF BOND FOR IMPORT-DUTY

18

(See section 92)

BOND

Nο

We, A B,

now of and C D.

of the same place, are jointly and severally bound to Her Majesty's Secretary of State for India in Council in the sum of Government rupees to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives

( date )

(Signed) (

The above bounden officer in charge of the Custom house at

having applied to the

for and obtained permission to lodge in the warehouse for a period of the following goods, that is to sayimported by sea from on board of the gida

and entered in the Custom-house Books of the Register of Goods imported by Sea.

as Ño The condition of this Bond is that

if the , or their legal representatives, shall observe all the rules prescribed in the Sea Customs Act, 1878, to be observed by owners of goods warehoused and by persons obtaining permission to ware. house goods under the provisions thereof ,

And if the said , or their legal representatives, shall pay to the officer in charge of the Custom house at the port of

all dues, whether customs duties, warehouse dues, rent or other lawful charges which shall be demandable on the said goods, or on account of penalties incurnd in respect to them, within

## THE INDIAN ARMS ACT, 1878.

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5 Unlicensed manufacture, conversion and sale prohibited

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6 Unlicensed importation and exportation prohibited Importation and exportation of arms and ammunition for private

- 7 Sanction of Local Government required to warehousing of arms, etc
- 8 [Repealed] 9 [Repealed ]
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- 12 Arrest of persons conveying arms, etc , under suspicious circumstances Procedure where arrest made by person not Magistrate or Police officer

### IV -Going armed and possessing Arms, etc

- 13 Prohibition of going armed without license
- 14 Unlicensed possession of fire arms, etc
- 15 Possession of arms of any description without license prohibited in certain places
- 16 Arms, of which possession has become unlawful, to be deposited at police station

for a

(Schedule -Part II -Forms )

PAPT II

FORMS

A

### FORM OF BOND FOR IMPORT DUTY

(See section 92)

ROND

Nο 18

We AB.

now of and C D.

of the same place, are jointly and severally bound to Her Majesty's Secretary of State for India in Council in the sum of Government rupees . to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives

( date )

(Staned) (

The above bounden having applied to the officer in charge of the Custom house at for and obtained permission to lodge in the warehouse period of the following goods, that is to say-

on board of the

imported by sea from ship and entered in the Custom house Books of the Register of Goods imported by Sea, as No

The condition of this Bond is that

, or their legal representatives, shall observe all the rules prescribed in the Sea Customs Act, 1878, to be observed by owners of goods warehoused and by persons obtaining permission to warehouse goods under the provisions thereof .

And if the said , or their legal representatives, shall pay to the officer in charge of the Custom horse at the port of

all dues, whether customs duties, warehouse dues, rent or other lawful charges which shall be demandable on the said goods, or on account of penalties incurred in respect to them, within

## (Schedule -Part II -Forms)

from the date of this Bond, or within such further time as the Chief Customs authority of shall allow in that behalf, together with interest on every such sum at the rate of six per cent per annum from the date of demand thereof being made in writing by the said officer in charge of the Custom-house.

And if, within the term so fixed or enlarged, the said goods, or any portion thereof, having been removed from the said-warehouse for home consumption or re-exportation by sea, the full amount of all customs duties, warehouse dues, rent and other lawful charges, penalties and interest demandable as aforesaid shall have been first paid on the whole of the said goods,

This obligation shall be void

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in full force

( date ) (Signed) (

В

#### FORM OF BONDED WAREHOUSE WARRANT

(See section 96)

I do hereby certify that have deposited in the warehouse of the undermentoned goods , which goods, the engage on demand, after payment of rent and incidental charges and Government dues or customs chargeable thereon, to deliver to the said or their assigns, or to the holder of this warrant to whom it may be transferred by endorsement.

C

FORM OF BOND FOR THE REMOVAL OF SPIRIT FROM A LICENSED DISTILLERY

(See sections 144 and 152)

₩e,

are jointly and severally bound to Her Majesty's Secretary of State for India in Council in the sum of Government rupees to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives

Dated this day of 18
(Signed) (

(Schedule -Part II -Forms)

being indebted to Her Majesty's The above bounden Secretary of State for India in Council in the sum of Government runees being the amount of duty payable at the rate of runees per imperial gallon London proof, for for for callons of gallons of proof spirit used in the preparation of dozens of bottles, or gallons of cordials and liquors, as specified in the annexed schedule) manufacwhich the said have been allowed to tured at remove thence for exportation by sea, subject to the provisions of the Sea Customs Act 1878, without having paid such duty

The condition of this obligation is that, if the above bounden

or their legal representatives, shall, at the expiration of four calendar months from the date of this obligation, pay or cause to be paid to the said Scoretary of State in Council duty at the rate of rupee per imperul gallon of proof spirit for all or any portion of the above mentioned which shall not have been then exported by sea to a foreign nort subject to the aforesaid provisions (of which exportation, if any, due

port subject to the aforesaid provisions (of which exportation, if any, due proof shall be given), or passed for local consumption on payment of duty, then this bond shall be void, otherwise the same shall remain in full force

Signed in the presence of

Date

If the bond be for cordials and other liquors under section 152 add-Schedule

| Quantity in bottles or gillions. | Quantity of proof spirit |  |
|----------------------------------|--------------------------|--|
| 2                                | 3                        |  |
|                                  |                          |  |
|                                  |                          |  |
|                                  |                          |  |
|                                  |                          |  |
|                                  |                          |  |

## THE INDIAN ARMS ACT, 1878.

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#### PREAMBLE

## I -Preliminary

### SECTIONS

- 1 Short title Local extent
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  - 2 Commencement
  - 3 Repeal of enactments
  - 4 Interpretation clause

### II - Manufacture, Conversion and Sale

5 Unlicensed manufacture, conversion and sale prohibited

### III -Import, Export and Transport

- 6 Unlicensed importation and exportation prohibited Importation and exportation of arms and ammunition for private use
- 7 Sanction of Local Government required to warehousing of arms, etc
- 8 [Repealed]
- 9 [Repealed]
- 10 Power to prohibit transport
  - Transhipment of arms
  - 1 Power to establish searching stations
- 12 Arrest of persons conveying arms, etc, under suspicious circumstances Procedure where arrest made by person not Magistrate or Policeofficer.

## IV -Going armed and possessing Arms, etc

- 13 Prohibition of going armed without license
- 14 Unlicensed possession of fire arms, etc
- 15 Possession of arms of any description without license prohibited in certain places
- 16 Arms, of which possession has become unlawful, to be deposited at

### V -Licenses

#### SECTIONS

- 17 Power to make rules as to licenses
  - 18 Cancelling and suspension of license

### VI -Penalties

- 19 For breach of sections 5 6 10 13 to 17
- 20 For secret breaches of sections 5 6 10 14 and 15 For concealing arms etc
- 21 For breach of license
- 22 For knowingly purchasing arms etc from unlicensed person For delivering arms etc to person not authorised to possess them
- 23 Penalty for breach of rule
- 24 Power to confiscate

### VII -Miscellaneous

- 25 Search and seizure by Magistrate
- 26 Seizure and detention by Local Government
- 27 Power to exempt
- 28 Information to be given regarding offences
- 29 Sanction required to certain proceedings under section 19 clause
  (1)
  30 Searches in the case of offences against section 19 clause (1) how
  - conducted
  - 31 Operation of other laws not barred 32 Power to take census of fire arms
- 33 Notice and limitation of proceedings

THE FIRST SCHEDULE —ENACTMENTS REPEALED THE SECOND SCHEDULE [Repealed]

(I -Preliminary)

#### ACT No XI of 1878 1

[15th March 1878.]

An Act to consolidate and amend the law relating to Arms,
Ammunition and Military Stores.

WHEREAS It is expedient to consolidate and amend the law relating to arms, ammunition and military stores, It is hereby enacted as follows:-

## I -Preliminary

Short title.
Local extent.
Savings.

1 This Act may be called the Indian Arms Act, 1878, and it extends to the whole of British India  $^2$ 

But nothing herein contained shall apply to-

- (a) arms, ammunition or military stores on board any sea going vessel and forming part of her ordinary armament or equipment, or
- (b) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or imilitary stores by order of the Government, or by a public servint or a volunteer enrolled

1 For the Statement of Objects and Reasons, see Gazette of India, 1877. Pt. V. p. 669, for discussions in Council, eer that 1877. Supplement, pp 3016 and 3030, total 1878 Supplement, pp 435 and 453

Gazette 1899 Pt I, p 44

General Acts Vol IV.

As to the possession, manufacture and export of arms, ammunition and gunpowher in the Chittagong Hill Tracts, see the Chittagong Hill Tracts Regulation, 1900 (I of 1900), ss. 11 and 12 Ren. Code

2 As to definition of "Firstsh India" see the General Clauses Act, 1897 (X of 1897), s 1 (7),

## (I .- Preliminary.

under the Indian Volunteers Act, 1869,1 in the course of his duty as such public servant or volunteer

2 This Act shall come into force on such day 2 as the Governor General Commencein Council by notification in the Gazette of India appoints

3 On and from that day the enactments mentioned in the first schedule Repeal of hereto annexed shall be repealed to the extent specified in the third column of enactments. the said schedule. But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules, conditions and forms prescribed, under any enactment hereby repealed. shall be deemed to be respectively given, granted, made, published and pre scribed under this Act

And all such authorities, permissions licenses and exemptions shall, except as otherwise provided by this Act, continue in force for the periods for which they may have been given or granted respectively or, where no such period is expressly fixed for one year from the date2 on which this Act comes into force, and shall then cease to have effect

4 In this Act, unless there be something repugnant in the subject or interpretacontext .-

"cannon" includes also all howitzers, mortars, wall pieces, mitrailleuses and other ordnance and machine guns, all parts of the same, and all carriages. platforms and appliances for mounting, transporting and serving the same

"arms" includes fire arms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms

"ammunition" includes also all articles specially designed for torpedo service and submarine mining, rockets, gun cotton, dynamite, lithofracteur and other explosive or fulminating material, gun flints, gun-wads, percussioncaps, fuses and friction tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltnetre :

"military stores," in any section of this Act as applied to any part of British India, means any military stores to which the Governor General in Council may from time to time, by notification in the Gazette of India, specially extend such section in such part,3 and includes also all lead, sulphur, saltpetre and other material to which the Governor General in Council may from time to time so extend such section

"license" means a license granted under this Act, and "licensed" means holding such license.

(II -- Manufacture, Contersion and Sale III -- Import, Export and Transport)

#### II -Manufacture, Conversion and Sale

Unlicensed manufacture, conversion and sale pro hibited

5. No person shall manufacture, convert or sell, or keep, offer or expose for sale, any arms, ammunition or military stores, except under a license and in the manner and to the extent permitted thereby

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in torce prohibited from possessing the same, but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act shall without unnecessary delay, give to the Magistrate of the district, or to the officer in charge of the nearest police-station, notice of the sale and of the purchaser's name and address

#### III -Import, Export and Transport

Unl censed importation and export ation prohibited

Importation and exportation of arms and ammunition for private

use

6 No person shall bring or take by sea <sup>1</sup> or by Isad into or out of British India any arms, ammunition <sup>1</sup> or military stores except under a license and in the manner and to the extent permitted by such license

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition, but the Collector of Customs or any other officer empowered by the Local Government in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the Local Government thereon

Explanation —Arms, ammunition and military stores taken from one part of British India to another by sea or across intervening territory not being part of British India, are taken out of and brought into British India, within the meaning of this section

7 Notwithstanding anything contained in the Sea Customs Act, 1878,2 V. no arms, ammunution or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the Local Government

Eauction of Local Cov ernment required to warehousing of arms etc

<sup>1</sup>Arms ammunition and military stores brought into an Indian port and declared under manifest to be consignments to another port and not transhipped have been exempted from the operation of a 6 se notifications issued in 1879 1880 and 1887 Carette of India 1879, 1880 and 1882 Pr. J pp 580 49 and 129 respectively

(III -Import, Triort and Transport IV -Going armed and possessing Arms, etc )

- 8 [Let y of duties on arms, etc., imported by sea ] Rep by the Repealing and Amending Act, 1891 (XII of 1891)
- 9 [Power to impose dut j on imports by land ] Rep by the Repealing and Amending Act, 1891 (XII of 1891)

10 The Governor General in Council may, from time to time, by notifica- Power to tion in the Gazette of India.--

probibit transport

- (a) regulate or prohibit the transport of any description of arms, ammunition or military stores over the whole of British India or any part thereof, either altogether or except under a license and to the extent in the manner permitted by such license, and
  - (b) cancel any such notification

Explanation -- Arms, ammunition or military stores transhipped at a port Transhipin British India are transported within the meaning of this section

ment of arms.

11 The Local Government, with the previous sanction of the Governor Power to General in Council, may, at any places along the boundary-line between establish British India and foreign territory, and at such distance within such line as stations it deems expedient, establish searching posts at which all vessels, carts and baggage animals, and all boxes, bales and packages in transit, may be stopped and searched for arms, ammunition and military stores by any officer emnowered by such Government in this behalf by name or in virtue of his office.

12 When any person is found carrying or conveying any arms, ammuni tion or military stores, whether covered by a license or not, in such manner sons conveyor under such circumstances as to afford just grounds of suspicion that the same etc, under are being carried by him with intent to use them, or that the same may be suspicious used, for any unlawful purpose, any person may without warrant apprehend stances him and take such arms, ammunition or military stores from him Any person so apprehended, and any arms, ammunition or military stores Procedure

Arrest of pering arms,

so taken by a person not being a Magistrate or Police officer, shall be where arrest delivered over as soon as possible to a Police officer

All persons apprehended by, or delivered to, a Police officer, and all arms Megistrate or Police and ammunition seized by or delivered to any such officer under this section. Officer shall be taken without unnecessary delay before a Magistrate

made by per son not

#### IV -Going armed and possessing Arms, etc

13 No person shall go armed with any arms except under a license and Probibition to the extent and in the manner permitted thereby

3 0 00 1 1 3 1 1 3 1 3 1 30

armed without lyense.

(IV -Going armed and possessing Arms, etc V-Licenses)

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate, Police-officer or other person empowered by the Local Government in this behalf by name or by virtue of his office

Unlicensed pas ession of fire arms, etc.

114 No person shall have in his possession or under his control any cannon or fire arms, or any ammunition or military stores, except under a license and in the manner and to the extent permitted thereby

15 In any place to which section 32, clause 2, of Act No XXXI of 1860 3

applies at the time this Act comes into force or to which the Local Govern

Posse son of eris of any descriptio i without li en e cest n places.

ment with the previous sanction of the Governor General in Council, may by notification in the local official Gazette specially extend this section 4 no proh b ted in person shall have in his possession any arms of any description, except under a license and in the minner and to the extent permitted thereby 5 16 Any person possessing arms ammunition or military at ies, the pos Arms of which posses tion has be

co eu law ful to be de po sted at police-sta tion

session whereof by him has in consequence of the cancellation or expiry of a license or by the issue of a notification under section 15, become unlawful, shall deposit the same without unnecessary delay with the officer in charge of the nearest police station

If the owner of anything deposited under this section does not within three years from the date on which such thing is so deposited produce a license authorising him to possess the same and apply for delivery of the same, such thing shall be forfeited to Her Majesty

#### V .... Licenses

Power to make rules as to licenses

17 The Governor General in Council may from time to time, by notifica tion in the Gazette of India, make rules to determine the officers by whom the form in which, and the terms and conditions? on and subject to which, any license shall be granted, and may by such rules among other matters-

(a) fix the period for which such license shall continue in force ,

<sup>1</sup> Ver footnote on page 693

<sup>2</sup>The last three paras of s 14 were repealed by the Repealing and Amending Act 1891

is whole of a 16 have been extended by s Act 1874 (XIV of 1874) to certain 12 Pt II p 53 18 dated 6th March 1879 Gazette of ification issued by the Home Depart-

## (V -Licenses VI -Penalties)

- (b) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause 2, of Act No XXXI, of 18601 applies at the time this Act comes into force or in respect of any such license other than a license for possession granted in any other place.
- (c) direct that the holder of any such license other than a license for possession shall keep a record or account, in such form as the Local Government may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so,
- (d) empower any officer of Government to enter and inspect any premises in which arms, ammunition or military stores are manufactured or kept by any person holding a license of the description referred to in section 5 or section 6.
- (e) direct that any such person shall exhibit the entire stock of arms ammunition and military stores in his possession or under his control to any officer of Government so empowered, and
- (f) require the person holding any license or acting under any license to produce the same, and to produce or account for the arms, ammuntion or military stores covered by the same when called upon by an officer of Government so to do

18 Any license may be cancelled or suspended-

Cancelling and suspen sion of license.

- (a) by the officer by whom the same was granted, or by any authority to show which he may be subordinate, or by any Magnetrite of a district, or licease. Commissioner of Police in a presidency town, within the local limits of whose jurisdiction the holder of such licease may be, when for reasons to be recorded in writing such officer, authority Magnetrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such licease, or
- (b) by any Judge or Magi-trate before whom the holder of such license is convicted of an offence against this Art, or against the rules made under this Act, and

the Local Government may at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration

### VI -Penalties

219. Whoever commits any of the following off-nces (namely) -

(a) manufactures, converts or sells, or keeps, offers or exposes for sale, any 10,

For breach sections 4, 4

<sup>1</sup> Act XXXI of 1860 was repeated by s. 3 of this Act.
2 Officees under this section are bailable see Sch. II, Code of Criminal Procedure 1998 (Act V of 1893) General Acts, Vol. V

# (VI -Penalties)

arms, ammunition or military stores in contravention of the provisions of section 5,

- (b) fails to give notice as required by the same section,
- (c) imports or exports any arms, ammunition or military stores in con travention of the provisions of section 6,
- (d) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section 10.
- (e) goes armed in contravention of the provisions of section 13.
- (f) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of section 14 or section 15.
- (g) intentionally makes any false entry in a record or account which by a rule made under section 17, clause (c), he is required to keep,
- (h) intentionally fails to exhibit anything which by a rule made under section 17, clause (e) he is required to exhibit, or
- (i) fails to deposit arms, ammunition or military stores as required by section 14 or section 16.

shall be punished with imprisonment for a term which may extend to three years or with fine, or with both

20 Whoever does any act mentioned in clause (a), (c), (d) or (f) of section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penil Code, lor to any person employed upon a railway or to the servant of any public carrier,

and whoever, on any search being made under section 25, conceals or attempts to conceal any arms, ammunition or military stores,

shall be punished with imprisonment for a term which may extend to seven

years, or with fine, or with both

21 Wheever, in violation of a condition subject to which a licensa ha

- 21 Wheever, in violation of a condition subject to which a heense has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section 19 or section 20 be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both
- 22 Wheever knowingly purchases any arms, ammunition or military stores from any person not keensed or authorized under the proviso to section 5 to sell the same or

Por Lucar ingly pur chasing arms ato fro us licensed person.

For secret

breaches of

sections 5 6

For concest

ing arms

For breach

of license

etc

# (VI -Penaltres VII -Miscellaneous)

delivers any arms ammunition or military stores into the possession of any Tordelivers, in a garms, nerson without previously ascertaining that such person is legally authorized to etc, to pernossess the same.

shall be punished with imprisonment for a term which may extend to six possess them. months, or with fine which may extend to five hundred supees, or with both

23 Any person violating any rule made under this Act, and for the viola. Penalty for breach of tion of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both

24 When any person is convicted of an offence punishable under this Act. Power to committed by him in respect of any arms ammunition or military stores it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any vessel, cart or baggage animal used to convey the same, and any box. package or bale in which the same may have been concealed, together with the other contents of such box pact age or bale shall be confiscated

confiscate

#### VII - Viscellaneous

25 Whenever any Magistrate has reason to believe that any person resid Search and ing within the local limits of his jurisdiction has in his possession any arms, Magistrate ammunition or military stores for any unlawful purpose,

or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public neace.

such Magistrate having first recorded the grounds of his belief, may cruse a search to be made of the house or premises occupied by such person or in which such Magistrate has reason to believe such arms, ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a license, in safe custody for such time as he thinks necessary

The search in such case shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of some officer specially empowered1 in this behalf by name or in virtue of his office by the Local Government

26 The Local Government may at any time order or cause to be served Setternated defeating the prospection of any person, because in the prospection of any person. any arms, ammunition or military stores in the possession of any person, Local notwithstanding that such person is licensed to possess the same, and may Gorage detain the same for such time as it thinks necessary for the public safety

<sup>1</sup> For notification empowering Deputy Superintendents of Police in Burma to conduct searches see Burma Garette, 1908, Pt. I p 134

# (VII -Miscellaneous)

Power to exempt. 27. The Governor General in Council may from time to time, by notification published in the Gazette of India,—

- (a) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act and
- (b) 2cancel any such notification, and again subject the persons or things or the part of British India comprised therein to the operation of such prohibition or direction 3

Information to be given regarding offences, 28 Every person aware of the commission of any offence punishable under this Act shall in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Policeofficer or Magistrate, and

every person employed upon any railway or by any public carrier shall in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to 'the nearest Police officer regarding any box, package or bale in transit which he may have reason to suspect contains arms,

nome repaine torthe 6 vermentor hun-

For order exempting residents of Pondicherry, being Furopeans from payment of import duty on guns when holding passports from their own authorities we Notification No. 200 (axette of India) 1879 P. 1 p. 7.

For order everyting Curkin pensi ners fr in all profit it in and directions in respect of

1 p. 201

77' - Lo

5-1 5 45 C

For order withdrawing timer from the operation of the prohibitions contained in 88, 13 and 14 except so far as they relate to cannon see 4] R, and O

For notification as to disarmament of the Peshawar and certain other frontier districts we Garette of In lin 1899 Pt I p 285

<sup>2</sup> See for instance the partial cancellation of Notification No. 2-330 of 31st December 1870, by Notification No. 1431 Gazette of India 1899 Pt I p 614

me at he she ato an Indian port and d clared under manh the Persian Culf to be dated 17th April 1900, respect of an all parech

mt 1 0 1 1070

# Arms (VII -Miscellaneous)

ammunition or military stores in respect of which an offence against this Act has been or is being committed

29 Where an offence punishable under section 19, clause (f), has been Sanction committed within three months from the date on which this Act comes into certain force in any province, district or place to which section 32, clause 2, of Act proceeding XXXI of 18602 applies at such date, or where such an offence has been ccmsection 19. mitted in any part of British India not being such a district, province or place. clause (f) no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the district or. in a presidency town of the Commissioner of Police

699

30 Where a search is to be made under the Code of Criminal Procedure Searches in or the Presidency Wagistrates Act, 1877 3 in the course of any proceedings offeners instituted in respect of an offence punishable under section 19, clause (f). such search shall notwithstanding anything contained in the Said Code or Act.3 he made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf, and not otherwise

against section 19, clay (f) how con ducted.

31 Nothing in this Act shall be deemed to prevent any person from being Operation of other laws prosecuted under any other law for any act or omission which constitutes not barred. an offence against this Act or the rules made under it, or from being hable under such other law to any higher punishment or penalty than that provided by this Act Provided that no person shall be punished twice for the same offence

32 The I ocal Government may from time to time, by notification in take comme the keal official Gazette, direct a census to be taken of all fire arms in any of fire-arms. local area, and empower any person by name or in virtue of his office to take such census

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires

Any person refusing or neglecting to produce any such arms, when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with hoth

33 No proceeding other than a sut shall be commenced against any per- \otics and son for anything done in pursuance of this Act, without having given him limitation of at least one month's previous notice in writing of the intended proceeding and proceedings. of the cause thereof, nor after the expiration of three months from the accrual of such cause

| Eunuchs, see Criminal Tribes Act, 1871.                                                       |
|-----------------------------------------------------------------------------------------------|
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# Arms (VII -Miscellaneous)

ammunition or military stores in respect of which an offence against this Act has been or is being committed

29 Where an offence punishable under section 19 clause (f), has been Sanction committed within three months from the date! on which this Act comes into certain force in any province district or place to which section 32, clause 2, of Act proceedings XXXI of 1860<sup>2</sup> applies at such date, or where such an offence has been ccm section 19 mitted in any part of British India not being such a district province or place, clause (f) no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the district or, in a presidency town of the Commissioner of Police

30 Where a search is to be made under the Code of Criminal Procedure Searches in or the Presidency Magistrates Act 1877 3 in the course of any proceedings offencer of the Freshelic magnetic form offence punishable under section 19, clause (f), squares such search shall notwithstanding anything contained in the said Code or Act, 3 (f) how con be made in the presence of some officer specially appointed by name or in ducted virtue of his office by the Local Government in this belalf, and not otherwise

31 Nothing in this Act shall be deemed to prevent any person from being Operation of prosecuted under any other law for any act or omussion which constitutes not barred an offence against this Act or the rules made under it or from being hable under such other law to any higher punishment or penalty than that provided by this Act Provided that no person shall be pumshed twice for the same offence

32 The I ocal Government may from time to time, by notification in Powerts; take community to the community of all fire arms in our tables of all fire arms the cal official Gazette direct a census to be taken of all fire arms in any of arearms local area, and empower any person by name or in virtue of his office to tale such census

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires

Any person refusing or neglecting to produce any such arms when so re quired shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with hoth

h

33 No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act, without having given him limited at least one month's previous notice in writing of the intended proceeding and of the cause thereof, nor after the expuration of three months from the accrual of such cause

# (The First Schedule.)

# THE FIRST SCHEDULE.

## ENACTMENTS REPEALED

(See section 3.)

| Number and year         | Title                                                                                                                                                                                                | Extent of repeal.                                                                                                                                                                   |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| XVIII of 1841           | An Act for consolidating and amending the en<br>actments concerning the exportation of Mili-<br>tary Stores                                                                                          | So much as has not<br>been repealed.                                                                                                                                                |
| XXX of 1854             | An Act to provide for the levy of duties of Cus<br>toms in the Arracan, Pegu, Martaban and<br>Tenasserim Provinces                                                                                   | In the preamble, the<br>words "and that<br>the exportation of<br>munitions of war<br>from any of these<br>Provinces into for<br>eign States should<br>be prohibted"<br>Section 11 1 |
| XXXI of 1860            | An Act relating to the manufacture, imports<br>tion and sale of Arms and Ammunition and<br>for regulating the right to keep and use the<br>same, and to give power of disarming in cer<br>tain cases | So much as has not<br>been repealed.                                                                                                                                                |
| VI of 1866              | An Act to continue Act No XXXI of 1860                                                                                                                                                               | The whole.                                                                                                                                                                          |
| III of 1872             | The Santhal Parganas' Settlement Regulation .                                                                                                                                                        | So much of the sche<br>dule <sup>2</sup> as relates to<br>Act XXXI of 1860<br>and Act VI of 1866                                                                                    |
| <sup>8</sup> IX of 1874 | The Arakan Hills District Laws Regulation,<br>1874                                                                                                                                                   | So much of the sche<br>dule as relates to<br>Act XVIII of 1841                                                                                                                      |
| 4XV of 1874             | An Act for declaring the local extent of certain<br>enactments and for other purposes.                                                                                                               | So much of the first<br>schedule as relates<br>to Act XVIII of<br>1841                                                                                                              |

THE SECOND SCHEDULE

ARMS, ETC, LIABLE TO DUTY

[Rep by the Repealing and Amending Act, 1891 (XII of 1891)]

1 The rest of Act XXX of 1854 was repealed by the Upper Burma Laws Act, 1886 (XX of 1886), s 5

6 Supra.

<sup>580), \$ 5</sup> 2 A new schedule has since been substituted for the schedule here mentioned—Ben Code. \$ Bur Code

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| Vitis, Ascochyta,<br>Aureobasidium,<br>Bacteria,<br>Botiytis,                                                                                                                                    | 473<br>428<br>534<br>180, 267                                                              | Wheat (see Triticum) White rot of timber (due to Polyporeae) Willow (see Salix)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Taxus)                                                                                                           |
| Vitis, Ascochyta,<br>Aureobasidium,<br>Bacteria,<br>Botiytis,<br>Cercospora,                                                                                                                     | 473<br>428<br>534<br>180, 267<br>513                                                       | Wheat (see Triticum) White rot of timber (due to Polyporcae) Willow (see Salix) Witches Broom, due to  Zea, Bact                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Taxus)  Z eria, 535                                                                                              |
| Vitis, Ascochyta,<br>Aureobasidium,<br>Bacteria,<br>Botrytis,<br>Cercospora,<br>Cladochytrium,                                                                                                   | 473<br>428<br>534<br>180, 267<br>513<br>114                                                | Wheat (see Triticum) White rot of timber (due to Polyporeae) Willow (see Salix) Witches Broom, due to Accidium, 18, 24, 72, 88, Helmin                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Taxus)  Z eria, 535 thosporium, 512                                                                              |
| Vitis, Ascochyta, Aureobasidium, Bacteria, Botiytis, Cercospora, Cladochytrium, Cladosporium,                                                                                                    | 473<br>428<br>534<br>180, 267<br>513<br>114<br>510                                         | Wheat (see Triticum) White rot of timber (due to Polyporeae) Willow (see Salix) Witches Broom, due to Aecidium, 18, 24, 72, 88, 404, 410 Puccum                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Z eria, . 535 thosporium, 512 ia, 353                                                                            |
| Vitis, Ascochyts,<br>Aureobasidium,<br>Bacteria,<br>Botiytis,<br>Cercospora,<br>Cladochytrium,<br>Cladosporium,<br>Colletotrichum,                                                               | 473<br>428<br>534<br>180, 267<br>513<br>114<br>510<br>488                                  | Wheat (see Triticum) White rot of timber (dine to Polyporeas) Willow (see Salix) Witches Broom, due to Accidium, 18, 24, 72, 88, 404, 410 Caeoma, - 410 Pythium Pythium                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Z                                                                                                                |
| Vitis, Ascochyts,<br>Aureobasidium,<br>Bacteria,<br>Botiytis,<br>Cercospora,<br>Cladochytrium,<br>Cladosporium,<br>Colletotrichum,<br>Connothyrium,                                              | 473<br>428<br>534<br>180, 267<br>513<br>114<br>510<br>488<br>471                           | Wheat (see Triticum) White rot of timber (due to Polyporeae) Willow (see Salix) Witches Broom, due to Accidium, 18, 24, 72, 88, 404, 410 Caeoma, 411 Evoasceae, 19, 24, 52, 145, Tilletas                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Z eria, - 535 thosporium, 512 ia, 353 m, 116 , 310                                                               |
| Vitis, Ascochyta,<br>Aureobasidium,<br>Bacteria,<br>Botiyhs,<br>Cercospora,<br>Cladochytrium,<br>Colletotrichum,<br>Contothyrium,<br>Dematophora,                                                | 473<br>428<br>534<br>180, 267<br>513<br>114<br>510<br>488<br>471<br>202                    | Wheat (see Triticum) White rot of timber (dieto Polyporeas) Willow (see Salix) Witches Broom, due to Aecidium, 18, 24, 72, 88, 404, 410 Caeoma, 418 Evoasceae, 19, 24, 52, 145, 158, etc. Uredo, output                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Z z z z z z z z z z z z z z z z z z z z                                                                          |
| Vitis, Ascochyts,<br>Aureobasidium,<br>Bacteria,<br>Botiytis,<br>Cercospora,<br>Cladochytrium,<br>Colletotrichum,<br>Contothyrium,<br>Dematophora,<br>Glocosporium,                              | 473<br>428<br>534<br>180, 267<br>513<br>114<br>510<br>488<br>471<br>202<br>482, 484        | Wheat (see Triticum) White rot of timber (due to Polyporeas) Wiltow (see Salix) Witches Broom, due to Aceadum, 18, 24, 72, 88, 404, 410 Caeoma, 418 Evoasceae, 19, 24, 52, 145, 158, etc Ravenelia, 403 Usulag                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Z eria, - 535 thosporium, 512 ia, 353 m, 116 , 310 - 420 o, 279, 281, 282                                        |
| Vitis, Ascochyts,<br>Aureobasidium,<br>Bacteria,<br>Botiyns,<br>Cercospora,<br>Cladochytrium,<br>Colletorichum,<br>Contothyrium,<br>Dematophora,<br>Gleeosporium,<br>Laestadia,                  | 473<br>428<br>534<br>180, 267<br>513<br>114<br>510<br>488<br>471<br>202<br>482, 484<br>216 | Wheat (see Triticum) White rot of timber (due to Polyporeae) Willow (see Salix) Witches Broom, due to Aecadum, 18, 24, 72, 88, 404, 410 Caeoma, 418 Evoasceae, 19, 24, 52, 148 Evoasceae, 19, 24, 52, 148 Interval to the control of th | Z eria, 535 thosporium, 512 ia, 333 m, 116 , 310 420 o, 279, 281, 282 elerotinia, 264                            |
| Vitis, Ascochyts,<br>Aureobasidium,<br>Bacteria,<br>Botytis,<br>Cercospora,<br>Cladochytrium,<br>Cladosporium,<br>Contothyrium,<br>Dematophora,<br>Glecosporium,<br>Laestadia,<br>Leptosphaeria, | 473<br>428<br>534<br>180, 267<br>513<br>114<br>510<br>488<br>471<br>202<br>482, 484<br>216 | Wheat (see Triticum) White rot of timber (due to Polyporeae) Wiltow (see Salix) Witches Broom, due to Acendum, 18, 24, 72, 88, 404, 410 Caeoma, 410 Evoasceae, 19, 24, 52, 145, Italian, St. Wood destroying fungt, 5, 34, 36, 62, 32 Zizania, S                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Z eria, 535 thosporium, 512 ta, 353 m, 116 , 310 , 420 to, 279, 281, 282 Jistilago, 294                          |
| Vitis, Ascochyts,<br>Aureobasidium,<br>Bacteria,<br>Botiyns,<br>Cercospora,<br>Cladochytrium,<br>Colletorichum,<br>Contothyrium,<br>Dematophora,<br>Gleeosporium,<br>Laestadia,                  | 473<br>428<br>534<br>180, 267<br>513<br>114<br>510<br>488<br>471<br>202<br>482, 484<br>216 | Wheat (see Triticum) White rot of tamber (due to Polyporeae) Willow (see Salix) Witches Broom, due to Accidium, 18, 24, 72, 88, 404, 410 Caeoma, 418 Evoasceae, 19, 24, 52, 145, Italian 188, etc Ravenelia, 403 Wood destroying fungt, 5, 34, 36, 62, 72 [see also Polyporeae, (see also Polyporeae, 2 zirpphus, 3 zirpphus, 3 zirpphus, 3 zirpphus, 3 zirpphus, 3 zirpphus, 3 zirphus, 4 zirphu | Z eria, 535 thosporium, 512 ia, 353 m, 116 , 310 o, 279, 281, 282 elerotinia, 264 Uctilago, 294 Cephaleuros, 553 |





